



UE-210628

# ATTORNEY GENERAL OF WASHINGTON

Public Counsel

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March 14, 2022

## SENT VIA WUTC WEB PORTAL

Amanda Maxwell  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

Re: *Avista's 2021 Clean Energy Implementation Plan (CEIP) pursuant to WAC 480-100-640, Docket UE-210628, Reply Comments of Public Counsel*

Dear Director Maxwell:

The Public Counsel Unit of the Washington State Attorney General's Office ("Public Counsel") submits these comments pursuant to the Washington Utilities and Transportation Commission's ("Commission") February 3, 2022, Notice of Opportunity to Respond to Written Comments. In these comments, Public Counsel addresses stakeholder remarks regarding Avista's Final Clean Energy Implementation Plan (CEIP)<sup>1</sup>.

The CEIP provides an overview of Avista's plan for progressing towards the 2030 and 2045 clean energy requirements of WAC 480-100-610 (2) and (3) and the Clean Energy Transformation Act (CETA). WAC 480-100-640 requires that each CEIP discuss interim and specific targets, customer benefits, specific actions, incremental cost, and public participation.<sup>2</sup> Public Counsel, Commission staff ("Staff"), The Energy Project, NW Energy Coalition (NWE), Front & Centered, the Alliance of Western Energy Consumers (AWEC), Northwest Intermountain Power Producers Coalition in conjunction with Renewable Energy Coalition (NIPCC & REC), and the Sierra Club each filed comments regarding Avista's CEIP.

Stakeholder comments indicate multiple areas of consensus on ways in which Avista's CEIP must improve prior to its approval, as well as certain differences. Parties also outlined the need for additional guidance from the Commission going forward. Public Counsel appreciates the high level of participation in this Docket. Below, we address the comments by statutory and rule requirement.

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<sup>1</sup> Avista filed in this Docket both a Draft and a Final CEIP. For the purpose of these comments, any reference to the CEIP is a reference to the final CEIP filed on October 1, 2021.

<sup>2</sup> WAC 480-100-640 also requires discussion of alternative compliance and the early action coal credit, if applicable. Neither was applicable for this CEIP, so they will not be discussed.

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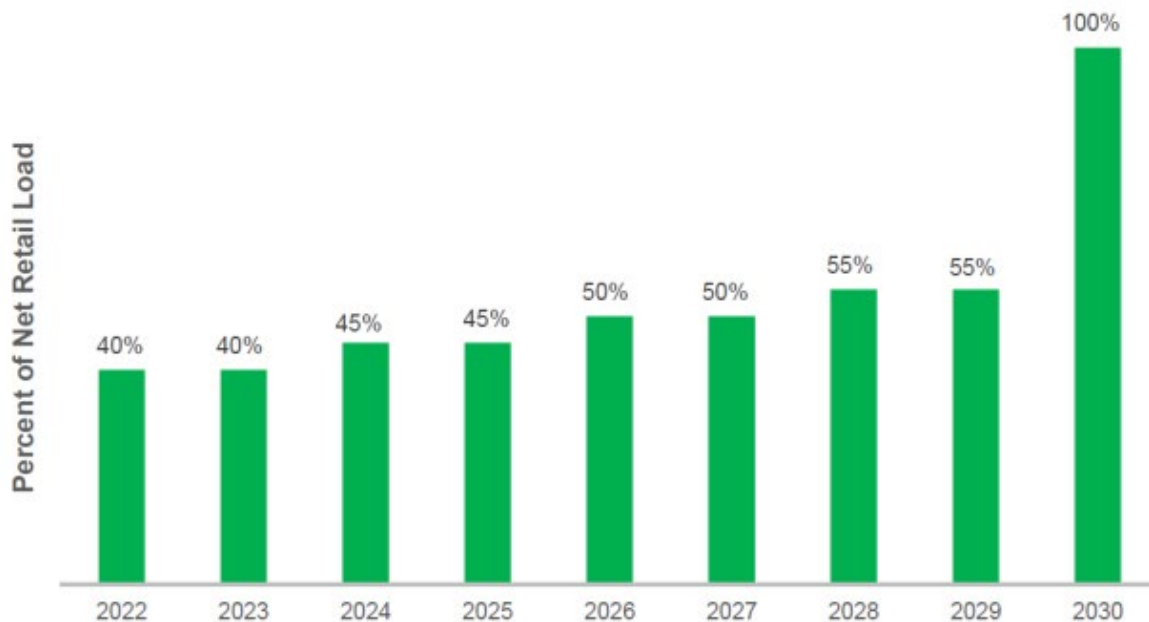
### Interim and Specific Targets

WAC 480-100-640 requires that each utility CEIP propose interim and specific targets to demonstrate how the utility will make reasonable progress toward meeting the 2030 and 2045 standards identified in WAC 480-100-610 (2) and (3) and provide specific targets for energy efficiency, demand response, and renewable energy.<sup>3</sup> Multiple parties provided insight regarding the Company's interim and specific targets. Below, Public Counsel responds to comments made by Staff and AWEC.

#### *Public Counsel Response to Staff*

Avista states that its proposed interim targets are intended to keep customer rates as low as possible for as long as possible by selling a portion of its renewable energy credits (RECs) until 2030. Avista's CEIP proposes to gradually increase the percent of net retail load served by renewable energy each year by increasing REC retirements. Figure 1 below outlines Avista's interim targets, determined by ramped-up REC retirements, leading to 2030.

**Figure 1: Percent of Net Retail Load**



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<sup>3</sup> WAC 480-100-640(2)-(3).

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Staff believes that selling the environmental attributes of clean energy to “keep the status quo as long as possible does not line up with either the stated intent of CETA, nor with the ratemaking goal of incrementalism.” Staff is concerned with the large jump between 2029 and 2030, illustrated in the figure above.<sup>4</sup> According to Staff, the large increase in REC retirements required for that year could significantly decrease Avista's revenue, and customers could potentially experience rate shock as a result.

We share Staff's concern about rate shock. While we appreciate Avista's efforts to keep customer costs low as it begins implementing CETA, Public Counsel agrees with Staff that additional analysis on the impact of REC sales would be helpful. Additionally, Public Counsel unfavorably views any policy that would result in rate shock to residential and small business customers. We understand that this first CEIP is for the years 2022–2025, but proper planning to ensure appropriate outcomes later is critical. Potential rate shock should not be addressed “when we get to it.”

Staff does not believe that the interim targets Avista proposes for the 2022–2025 compliance period truly represent progress toward CETA's statutory requirements. Staff believes that, although Avista plans to acquire more clean resources, the interim targets over the next four years would not represent progress toward the 2030 and 2045 goals. This is because Avista intends to sell the RECs generated from those sources, thus giving up claim to the nonpower attributes of the electricity generated by those resources.<sup>5</sup> Staff goes on to say that it does not have a specific recommendation as to what the interim targets should be, but does think Avista must propose targets that meaningfully implement CETA “beyond affordability concerns.”<sup>6</sup>

It is unclear to Public Counsel what Staff means by this or how and when Staff would prefer that Avista use the nonpower attributes, and Staff did not give any specific recommendations. From Public Counsel's perspective, customer affordability must remain a top concern throughout the clean energy transition. Public Counsel has advocated throughout this process for many Customer Benefit Indicators (CBIs) that interact with affordability, including customer arrearages, disconnections, and energy burden. We caution against minimizing customer affordability.

Staff states that the interim targets for Avista pertaining to the appropriate percentage of Washington RECs sold prior to 2030 is ultimately a policy call for the Commission. Public Counsel agrees, this is an area that requires more guidance from the Commission. We urge the

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<sup>4</sup> Staff Comments on Avista Corp's Final CEIP at 7 (filed Jan. 28, 2022) [hereinafter “Staff Comments”].

<sup>5</sup> Staff Comments at 7.

<sup>6</sup> Staff Comments at 8.

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Commission, however, to continue to prioritize customer affordability and other customer benefits as it determines appropriate interim targets.

Staff also addresses the energy efficiency and demand response targets provided by Avista. Similar to Public Counsel, Staff expressed disappointment in Avista's demand response target of 30 MW, which is limited to a single interruptible contract. Staff outlined its expectation that Avista "use the next few years" to start building capacity for additional demand response programs, which includes early investment in programs expected to be cost-effective in the near future, facilitating demand response market transformation, and ensuring the full value of demand response is included in its assessments.<sup>7</sup> Broadly, Staff states significant work must take place around distributed energy resources (DERs) in the next few years to ensure Avista's future success. Public Counsel agrees with Staff's assessment, and reiterates the important role of DERs in Avista's clean energy future.

Avista addressed this in its comments filed February 24, 2022, and stated that it does not oppose developing quantifiable targets for pricing programs once pilots are complete and found to be in the best interest of customers, but that the pilots will not begin until 2023. We understand the purpose of a pilot is to gather more data as it relates to target setting and cost-effectiveness. Our concern follows the same logic as Staff's, in that we want to ensure Avista is prepared to offer meaningful and effective demand response programs in the future.

Absent quantified targets, Avista must provide more transparency and opportunity for feedback regarding its ongoing pilots. Public Counsel recommends that Avista share the results of the pilot programs, along with its analysis and conclusions, and that it develop targets in consultation with the advisory groups once the results are known. Avista should propose specific demand response targets no later than the biennial update, but sooner if possible.

#### *Public Counsel Response to AWEC*

AWEC's argues that Avista has sufficient generation to meet its proposed net energy goals until 2030. Contrary to Avista's claims,<sup>8</sup> AWEC believes that Avista's planned early resource acquisition is uneconomic and increases costs and risks to customers.<sup>9</sup> AWEC states that Avista does not demonstrate that early acquisition mitigates risks, and that Avista should perform a holistic analysis similar to integrated resource planning to determine whether early renewable acquisition is cost-effective.<sup>10</sup>

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<sup>7</sup> Staff Comments at 10.

<sup>8</sup> Final CEIP of Avista at 2-14 (filed Oct. 1, 2021).

<sup>9</sup> AWEC Comments on Avista's Final CEIP at 2 (filed Jan. 28, 2022).

<sup>10</sup> AWEC Comments on Avista's Final CEIP at 6.

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Public Counsel expects Avista to provide sufficient analysis to support its program and acquisition choices, which includes risk and sensitivity analyses. It would be helpful if these analyses were provided and discussed in CEIPs, to ensure an appropriate path forward and not delay transition to clean energy due to inappropriate planning. It is important to note that reviewing this analysis in a CEIP docket would not establish or pre-determine prudence. Prudence of these acquisitions is not under consideration in this Docket, or any utility's CEIP docket. Avista will have to demonstrate prudence, including appropriate risk mitigation provided by early acquisition, when it requests cost recovery.

### **Customer Benefits**

Under WAC 480-100-610(4)(c), each CEIP must propose CBIs that ensure that all customers are benefiting from the transition to clean energy through the following:

- The equitable distribution of energy and non-energy benefits and reductions of burdens to Vulnerable Populations and Highly Impacted Communities;
- Long-term and short-term public health and environmental benefits and reduction of costs and risks; and
- Energy security and resiliency.

As mentioned in prior comments, Public Counsel partnered with NWEA, The Energy Project, and Front and Centered (collectively, "Joint Advocates") to propose and file in each utility CEIP and Public Participation Plan docket a comprehensive list of proposed CBIs. The Joint Advocates filed the proposed CBIs in this Docket on August 20, 2021.<sup>11</sup> Before this Docket was established, the Joint Advocates filed the proposed CBIs Docket UE-210295, Avista's Public Participation Plan, on July 30, 2021.

Among the comments filed by the Joint Advocates, there is general consensus that Avista's current CBIs are incomplete and do not adequately capture customer benefits in the transition to clean energy. Specifically, Joint Advocates agree that Avista's proposed CBIs do not fully address increased community employment opportunities, reduced barriers to program participation, reduction in number and amount of arrearages, reduced residential disconnections, and public health.

The Joint Advocates differ, however, in ways to address the CBI inadequacies. For instance, The Energy Project and Public Counsel agree that Avista's current CBIs are insufficient and do not adequately capture customer benefits in each of the areas listed above. We differ, however, in our approach to the issue. Below we respond to The Energy Project's proposal, explain the

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<sup>11</sup> See Comments of Public Counsel at 6, Table 2 (filed Jan. 28, 2022). A comprehensive list of Joint Advocate CBIs compared to Avista CBIs.

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motivation behind our recommendation, and propose potential solutions. We additionally respond to Staff and Avista's comments.

### *Public Counsel Response to The Energy Project*

The Energy Project recommends that the Commission condition its approval of Avista's CEIP on inclusion of the Joint Advocates' CBIs.<sup>12</sup> The Energy Project states that delaying the adoption of reasonable proposals for four years is unnecessarily slow and cautions against "kicking the can down the road" by not adopting realistic CBIs and metrics now.<sup>13</sup>

Public Counsel agrees that addressing Avista's CBIs at the next CEIP is too late. Indeed, Public Counsel recommends that Avista address the CBIs on a more expedited timeline. Specifically, we recommended that Avista formally propose the Joint Advocate CBIs to its Equity Advisory Group (EAG) and submit CBIs in the identified areas no later than the biennial CEIP update. Our goal is to ensure proper EAG engagement going forward. Avista did not properly engage its EAG in the creation of CBIs when it failed to present the Joint Advocate proposal and gather feedback. As stated in our previous comments, we believe Avista had plenty of time to do this. Regardless, in an effort to best ensure success in the future, we prioritized that engagement in generating these first CBIs because we feel that EAG feedback is important.

The statute does not require that all CBIs be agreed to by the EAG.<sup>14</sup> Importantly, Public Counsel is neither encouraging Avista to underutilize its EAG and unnecessarily delay implementation of appropriate action, nor suggesting that the EAG serve as a "gatekeeper" to Avista's CEIP. The statute clearly states Avista must involve all its advisory groups.<sup>15</sup>

However, Public Counsel believes it would be beneficial to set the standard for EAG engagement. This is important to ensure that the CBIs proposed by Avista lead to an equitable transition for all. Public Counsel's recommendation is unique to Avista's situation in this first CEIP. Due to a significant amount of hydro in its portfolio, Avista's current renewable and nonemitting energy production equals 74 percent of its retail load.<sup>16</sup> While we generally agree with The Energy Project's concern about unnecessary delays, we think Avista's position allows flexibility to take a reasonable amount of time to do things right. Regardless of the Commission's decision, Public Counsel strongly emphasizes that Avista must meaningfully engage its EAG going forward, and failing to do so is not an excuse for lack of action.

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<sup>12</sup> The Energy Project Comments on Avista's Final CEIP ¶ 46 (filed Jan. 28, 2022) [hereinafter "The Energy Project Comments"].

<sup>13</sup> The Energy Project Comments ¶ 4.

<sup>14</sup> WAC 480-100-655.

<sup>15</sup> WAC 480-100-655(1)(a).

<sup>16</sup> Final CEIP of Avista at 2-1.

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Public Counsel chose the biennial CEIP update as the time to submit revised CBIs because it is an existing formal review process. Avista will, presumably, have many meetings with its EAG between now and then. The Commission could reasonably require Avista to submit CBI updates sooner than Public Counsel suggests.

Additionally, The Energy Project states that certain CBIs not included by Avista were originally mentioned by the EAG, and presumably excluded due to efforts to consolidate and simplify.<sup>17</sup> This includes conversion to energy efficient appliances, workforce development programs for local jobs, initiatives to address systemic racism, and backup energy sources available in Named Communities.<sup>18</sup> There are also certain metrics which Avista is already tracking as a result of COVID-19, such as customer disconnections and arrearages,<sup>19</sup> and The Energy Project recommends these metrics continue to be tracked to ensure customer benefits in the clean energy transition. Public Counsel agrees it would be reasonable to condition the approval of the CEIP on the immediate adoption of these metrics.

It is also within Commission authority to require additional metrics, not already tracked or discussed by the EAG. We would recommend, however, if those additional metrics are adopted now, the Commission should require Avista to discuss them with the EAG and gather any additional feedback and refinement by the biennial CEIP update or another expedited timeline.

#### *Public Counsel Response to Staff*

Each CEIP must ensure an equitable distribution of customer benefits to Highly Impacted Communities and Vulnerable Populations. Highly Impacted Communities are defined by the Department of Health, whereas Vulnerable Populations are defined as “communities that experience a disproportionate cumulative risk from environmental burdens due to: Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and sensitivity factors, such as low birth weight and higher rates of hospitalization.”<sup>20</sup> This requires utility interpretation to geographically identify the Vulnerable Populations within its service territory.

Staff points out that Avista used only Census data to identify Vulnerable Populations, which does not allow identification of communities with higher incidences of adverse socioeconomic and sensitivity factors or other factors untracked by the Census.<sup>21</sup> Census data tends to be highly

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<sup>17</sup> The Energy Project Comments ¶ 8.

<sup>18</sup> “Named Communities” is a term used by Avista to refer to both Highly Impacted Communities and Vulnerable Populations, which are defined in WAC 480-100-605.

<sup>19</sup> The Energy Project Comments ¶¶ 24 and 30.

<sup>20</sup> WAC 480-100-605.

<sup>21</sup> Staff Comments at 11.

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aggregated. While Census data serves as a decent starting point, it lacks more granular, localized information. Public Counsel agrees with Staff that Avista should work to incorporate more granular data to identify Vulnerable Populations. We additionally agree that Avista must clearly analyze and identify in both its CBIs and specific actions, the benefits to Vulnerable Populations and Highly Impacted Communities compared to all customers.<sup>22</sup>

### *Public Counsel Response to Avista*

Avista stated in its CEIP that they did not have adequate time to present the CBIs to their EAG, other advisory groups, or the CEIP workgroup.<sup>23</sup> They reiterated this statement in their reply comments filed on February 24, 2022.<sup>24</sup> Public Counsel noted in prior comments that the Joint Advocates filed our proposed CBIs in Avista's Public Participation Plan docket on July 30, 2021.<sup>25</sup> This was two weeks prior to Avista's draft CEIP filing and two months prior to the final CEIP filing. Since the Final CEIP was filed, Avista has had an additional six months to address the Joint Advocates' proposed CBIs. During this time, Avista has not presented the suggested CBIs to its EAG or any other advisory groups.

Avista questions a supposed "sudden interest" from one of the Joint Advocates. Specifically the Company states:

To the Company's knowledge, Front and Centered did not attend any IRP Technical Advisory Committee meetings, CEIP public meetings, EAG meetings or any other Company advisory group meetings. Further, Front and Centered has never discussed with the Company's its CEIP or in general, the services Avista provides to its customers. The Company finds it peculiar that Front and Centered would now show interest in its CEIP and take issue with the CBIs the Company developed and proposed.

Avista's criticism is inappropriate. First, Front and Centered is squarely interested in energy issues and their impact on communities of color, low-income communities, and indigenous communities. From the organization's website, "Front and Centered is advocating for a Just Transition from this extractive energy system toward a regenerative energy system that puts the health and well-being of current and future generations first at every stage of the energy process,

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<sup>22</sup> Staff Comments at 12.

<sup>23</sup> Final CEIP of Avista, App'x F at 41 (Appendix F is not consecutively paginated, so to avoid confusion we referenced the document page number instead of the labeled page number).

<sup>24</sup> Avista Utilities CEIP Reply Comments at 8 (filed Feb. 24, 2022) [hereinafter "Avista's Reply"].

<sup>25</sup> Initial Comments of Public Counsel at 3 (filed Sept. 7, 2021).



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from Source to Use.”<sup>26</sup> Evaluation of utility CEIPs and their associated CBIs align with the organization's priorities.

Further, Front and Centered is one of the Joint Advocates along with Public Counsel, The Energy Project, and NWEA. As such, the organization served a critical role in drafting the proposed CBIs. The organization additionally serves directly on the EAG for Puget Sound Energy, another Washington investor-owned utility. Front and Centered has ample knowledge and insight, and to criticize its role in this process is surprising and inappropriate.

Finally, we note again that this is a public process. As such, any individual or organization may provide comment. Avista points out that lack of public participation is not unique to Avista. From Public Counsel's perspective, it is disingenuous to claim that public participation is an issue facing the utilities generally, then to attack stakeholders that choose to participate, particularly when the subject of Avista's criticism is a relatively newer voice in the process. We are disappointed in Avista's criticism and believe it is contrary to the important policy of bringing new voices into the regulatory process.

## **Public Participation**

### *Public Counsel Response to Staff & Avista*

Staff mentioned in its comments that the emphasis on public participation is a new paradigm, but criticized Avista for approaching the CEIP with a compliance, rather than results, focus. Staff indicated that it was disappointed in Avista's methods of outreach, level of language translation, and EAG transparency and participation.

Avista used email to invite customers to its public participation meetings and send two surveys to gather feedback from all its customers on CBIs. Staff criticized this as a passive outreach method used to meet the minimum requirements.<sup>27</sup> As Public Counsel understands it, a “passive outreach” is one in which the recipient is simply exposed to the general message and they may choose whether to respond to it. While this approach is good for reaching many people with a general message, it should be combined with active, or targeted outreach to encourage and increase participation. This is particularly important when engaging new or traditionally under-represented voices.

Avista stated in its comments filed February 24, 2022, that lack of participation in public meetings is not unique to Avista or even Washington utilities in general. Avista pointed to a

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<sup>26</sup> *Energy Justice For All*, FRONT AND CENTERED, <https://frontandcentered.org/energy-justice-for-all/> (last visited Mar. 10, 2022).

<sup>27</sup> Staff Comments at 13.

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Department of Ecology Eastern Washington public participation meeting for the Climate Commitment Act, which only included 17 participants, including four translators and two Avista representatives.<sup>28</sup> Avista opined that customers may not have the desire, need, or want, to be involved at the level at which they are being asked to participate.<sup>29</sup> While this may be partially true, it is a premature conclusion because Avista has not combined active outreach methods with its passive methods. Public Counsel agrees with Staff that Avista should more actively engage its customers in outreach, especially those in Named Communities. This emphasizes the importance of Avista further localizing Vulnerable Population data, as it will help enable this outreach.

Staff expressed disappointment that the emails sent did not include alternative languages, nor were other materials provided in other languages until August, which was too late in the process and may have impacted the end result.<sup>30</sup> Translating public communications is a step closer to active outreach, as it targets those that normally would not participate due to language restrictions. Public Counsel shares Staff's concerns regarding language translation services, and Avista's EAG noted that several other languages may need to be addressed to overcome language access barriers.

In its reply comments, Avista states that Staff fails to recognize that there are established timelines to provide customers with printed materials that does not lend itself to a quick turnaround.<sup>31</sup> This is true, but it is also true that Avista knew the CEIP was in production and could have been more proactive in translating documents ahead of time. Nevertheless, Avista acknowledged the need for additional language translation in its CEIP and commit to working with its EAG to identify where efforts would be most impactful.<sup>32</sup> Public Counsel expects Avista to incorporate improvements to its language translation practices. Avista should be familiar with the time and steps required to translate its materials and plan accordingly to adhere to CEIP timelines and allow for meaningful engagement.

Avista held two EAG meetings during the planning process that were not fully open to the public. Each meeting had a portion that was public, and consisted of Avista presenting a slide deck, and then a private portion where ideas were discussed with the EAG. Staff indicated that this format prevented members of the public, stakeholders, and members of Named Communities that are not members of the EAG from listening to crucial conversations about CBI creation. Staff and Public Counsel both provided feedback to Avista's EAG team at the time of these meetings that Avista must open them to the public and provide adequate transparency. Avista incorporated that contemporaneous feedback and EAG meetings since the first two have been

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<sup>28</sup> Avista's Reply at 13.

<sup>29</sup> Avista's Reply at 13.

<sup>30</sup> Staff Comments at 13.

<sup>31</sup> Avista's Reply at 14.

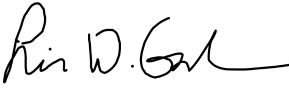
<sup>32</sup> Final CEIP of Avista at 6-10.

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fully open to the public. We agree with Staff and reiterate the expectation that this transparency continue into the future.

We look forward to continued collaboration with Avista, members of Avista's advisory groups, The Energy Project, NWECA, Front and Centered, and the members of the public participating in this process, and appreciate the opportunity to submit these comments. If you have any questions about this filing, please contact Shay Bauman at (206) 389-3040 or via e-mail at [Shay.Bauman@ATG.WA.GOV](mailto:Shay.Bauman@ATG.WA.GOV).

Sincerely,

/s/ 

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