BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, v. AVISTA CORPORATION Respondent.	)	DOCKETS UE-150204 and UG-150205 (*Consolidated*)

POST-HEARING BRIEF

OF THE

ALLIANCE OF WESTERN ENERGY CONSUMERS

January 8, 2020

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 2

III. ARGUMENT 5

A. The Refund Owed to Customers is Appropriately Calculated Over a 2.3-Year Period. 7

B. The Commission Should Consider Only the Information it Had at the Time Order 05 Was Issued. 9

C. The Commission Should Either Rerun the Attrition Model to Recalculate Avista's Rates or Remove All Rate Base Escalation Assumed in the Attrition Model. 10

1. AWEC's recommended refund results from re-running the attrition model to incorporate all data in the model "logically on a holistic basis," as the Commission directed in Order 06. 10

2. If the Commission removes attrition-related rate base outside of the attrition model, it should exclude pro forma plant additions from rate base. 13

D. Depreciation Expense is "Attributable" to Rate Base. 13

E. The Commission Should Apply Interest to the Ordered Refund Amount. 16

F. The Commission Should Disregard the Impact of the Ordered Refund Amount on Prior Years' Returns. 18

G. If the Commission Considers the Impact of Ordered Refunds on Prior Years' Returns, It Should Order the Refund Identified in Exhibit EMA-24 Over a 2.3-Year Period. 19

IV. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Page

Office of Attorney Gen., Pub. Counsel Unit v. Wash. Utils. & Transp. Comm'n, 4 Wn. App. 2d 657 (2018) 1, 3, 4, 5, 9, 13, 14

People's Org. for Wash. Energy Resources v. WUTC, 104 Wn.2d 798 (1985).....9

People's Org. for Wash. Energy Resources v. WUTC, 101 Wn.2d 425 (1984).....14

City of Tacoma v. Sperry & Hutchinson Co., 82 Wash. 393 (1914).....17

Administrative Orders

WUTC v. Avista Corporation, Dockets UE-150204 and UG-150205 (*Consolidated*), Order 05 (Jan. 6, 2016). 3

WUTC v. Avista Corporation, Dockets UE-150204 and UG-150205 (*Consolidated*), Order 06 (Feb. 19, 2016).....2, 4, 10, 11, 12

WUTC v. Avista Corporation, Dockets UE-150204 and UG-150205 (*Consolidated*), Order 07 (May 29, 2019). 5

WUTC v. Pacific Northwest Bell Telephone, et. al., 78 P.U.R.4th 398 (Wash. U.T.C.) ..17

Re Application of Avista Corp. for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant, Docket Nos. UE-991255/UE-991262/UE-991409, 2000 Wash. UTC LEXIS 252 (Mar. 6, 2000).....9

WUTC v. Avista Corporation, Dockets UE-160228/UG-160229 (*Consolidated*), Order 06 (Dec. 15, 2016) 8, 10

WUTC v. Puget Sound Energy, Dockets UE-111048/UG-111049 (*Consolidated*), Order 08 (May 7, 2012) 14, 18

WUTC v. Avista Corp., Dockets UE-170485/UG-170486/UE-171221/ UG-171222, Orders 07 & 02 (Apr. 26, 2018).....10, 14

WUTC v. Pacific Power & Light Co., Dockets UE-140762/UE-140617/UE-131384/ UE-140094, Order 08 (Mar. 25, 2015). 15

Statutes and Rules

RCW § 80.04.250 .....4, 13, 15, 16

RCW § 80.28.020 9

RCW § 80.04.230 17

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission's ("Commission" or "WUTC") direction at the December 6, 2019 hearing in this matter, the Alliance of Western Energy Consumers ("AWEC") files this Post-Hearing Brief.

2 This case arises from a Washington Court of Appeals ("Court") decision finding that rates the Commission authorized for Avista Corporation ("Avista" or the "Company") in the Company's 2015 general rate case were unlawful because they were based in part on an "attrition adjustment" that included rate base that was not used and useful for service as of the rate-effective date. The Court has required the Commission to "recalculate Avista's rates without relying on rate base that is not used and useful."[1/]

3 Despite this facially simple direction, the record developed on remand presents the Commission with starkly different options based on fundamental disagreements about what is required to achieve the Court's direction. While AWEC, Commission Staff, and Public Counsel arrive at different refund recommendations, each of these parties identifies refunds owing to customers of over $40 million. Avista, meanwhile, asserts that it owes customers nothing (although its rebuttal testimony appears to backtrack from this position slightly).

4 The two largest drivers of these differences are (1) the time period over which to calculate refund amounts, and (2) whether the Commission should rerun the attrition model without what Avista refers to as the "attrition-related rate base"[2/] or simply back out the

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[1/] Office of Attorney Gen., Pub. Counsel Unit v. Wash. Utils. & Transp. Comm'n, 4 Wn. App. 2d 657, 689 (2018) ("Public Counsel").

[2/] Exh. EMA-9T at 16:4.

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escalation assumed for rate base in the attrition model (which AWEC argues includes escalation for depreciation expense in this context).

5 As argued below, regardless of any other decisions the Commission makes in determining the proper refund amount, two principles should underlie its decision. First, the refund should be calculated over a 2.3-year period. Avista's arguments to the contrary, this is the amount of time the rates determined to be unlawful were in effect and, therefore, an accurate refund can only be calculated over the period that customers paid these unlawful rates. Second, the Commission's decision should be internally consistent. Previously in this docket, the Commission rejected attempts to apply additional reductions to the electric revenue requirement by accounting for a reduction to the power cost baseline outside of the attrition model. Avista now proposes to do something similar. It calculates "attrition-related rate base" outside of the attrition model by subtracting the rate base derived from the attrition model from the rate base assumed in a competing pro forma study even though the attrition model did not include pro forma rate base. Either *all* rate base escalation in the attrition model should be removed, or pro forma rate base should be added to the attrition model and this model should be rerun to arrive at an overall revenue requirement "logically on a holistic basis," as the Commission previously determined was necessary.[3/]

II. BACKGROUND

6 On January 6, 2016, the Commission issued Order 05 in this docket authorizing a $10.8 million, or 6.3%, rate increase for Avista's gas customers and an $8.1 million, or 1.63%,

[3/] Order 06 ¶ 16 (Feb. 19, 2016).

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rate decrease for Avista's electric customers.[4/] Incorporated into these rate changes was a Commission-approved attrition adjustment for both gas and electric service.[5/] The Commission authorized an attrition adjustment of $6.8 million for gas service and $28.3 million for electric service.[6/] Relevant here, the attrition adjustment for gas and electric service included escalation rates for, among other things, net plant and depreciation/amortization.[7/]

7 Following Order 05, Staff filed a Motion for Reconsideration. AWEC (then the Industrial Customers of Northwest Utilities) and Public Counsel also filed a Motion for Clarification of this order, arguing that the Commission incorrectly calculated the attrition adjustment for electric service.8/ "Based on the adjustments described in Order 05," AWEC and Public Counsel calculated an electric attrition adjustment $13.3 million lower than the Commission authorized.9/ The most significant driver of the difference was AWEC and Public Counsel's proposal to account for an update to Avista's power cost baseline that it provided late in the proceeding, and pursuant to the multiparty stipulation the Commission adopted.[10/] Subsequently, on February 4, 2016, Staff filed a Motion to Reopen the Record for the Limited Purpose of Receiving Into Evidence Instruction on Use and Application of Staff's Attrition Model. This motion sought to update the attrition model the Commission used to calculate the

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4/ Dockets UE-150204/UG-150205, Order 05 at 1 (Jan. 6, 2016).
5/ Id. at 2.
6/ Id.
7/ Public Counsel, 4 Wn. App. 2d at 667.
8/ Dockets UE-150204/UG-150205, Joint Motion for Clarification of the Industrial Customers of Northwest Utilities and Public Counsel (Jan. 19, 2016).
9/ Id., ¶ 6. AWEC's and Public Counsel's adjustments included several miscellaneous items not applicable here.
10/ Id.

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attrition adjustment to incorporate all of the information Avista provided pursuant to the partial multiparty stipulation approved in Order 05.[11/]

8 In Order 06, the Commission denied Staff's Motion for Reconsideration, its Motion to Reopen the Record, and AWEC and Public Counsel's Motion for Clarification. In denying the Motion for Clarification, the Commission found that it was not "appropriate to treat Avista's power cost update outside of the attrition model … A change in any specific data or assumption used in the attrition model will invariably affect other data in the model and needs to be assessed logically on a holistic basis, not on a selective basis inside or outside of the model …."[12/] The Commission also found that the revenue requirements determined in Order 05 achieved a reasonable "end result."[13/]

9 Public Counsel sought judicial review of Order 05, arguing among other things that the Commission's approved attrition adjustment established rates for Avista that "relied on estimates that were not associated with any particular 'used and useful' Avista plant," in violation of RCW 80.04.250 in effect at that time.[14/] The Court partially agreed, finding that "the [Commission] based its calculation of Avista's rate base on projections rather than any specific identifiable plant. Regardless of their accuracy, use of projections in determining rate base ignores the requirement that the [Commission] only consider property 'used and useful for service' in Washington."[15/] The Court also, however, found that RCW 80.04.250 "is purely a *rate base* statute and does not apply to operating expenses."[16/] Thus, the Court did not disturb

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[11/] Staff Motion to Reopen Record at 3 (Feb. 4, 2016).
[12/] Order 06 ¶ 16.
[13/] Id. ¶ 28.
[14/] Public Counsel, 4 Wn. App. 2d at 677.
[15/] Id. at 687.
[16/] Id. (emphasis in original).

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the attrition adjustment with respect to "increases in Avista's O&M expenses."[17/] The Court, therefore, struck "all portions of the attrition allowance attributable to Avista's rate base and reverse[ed] and remand[ed] for the [Commission] to recalculate Avista's rates without relying on rate base that is not used and useful."[18/]

10 Following remand, the Commission initiated this phase of the proceeding to receive evidence of "the portions of rates that incorporate or rely on rate base, rather than, for example, operations and maintenance expenses. Portions of rates that incorporate rate base may or may not include, for example, components of power costs."[19/]

III. ARGUMENT

11 To effectuate the Court's decision, AWEC recommends that the Commission order Avista to refund $57.8 million to its electric customers and $19.2 million to its gas customers. Four components comprise these refund recommendations: (1) return *on* rate base; (2) return *of* rate base; (3) the revenue requirement results achieved by rerunning the attrition model without rate base; and (4) interest on over-collected amounts. The details of each component were provided in Table 1 on page 3 of Mr. Mullins' testimony, Exhibit BGM-7T, which is reproduced below:

[17/] Id.
[18/] Id. at 689.
[19/] Order 07 ¶ 11 (May 29, 2019).

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		Rate Adjustment Period			
	From	11-Jan-16	1-Jan-17	1-Jan-18	Total
	To	31-Dec-16	31-Dec-17	30-Apr-18	Refund
	Electric				
	Return on Rate Base	(4,178)	(4,295)	(1,400)	(9,874)
	Return of Rate Base	(3,025)	(3,110)	(1,014)	(7,150)
	Power Costs	(11,770)	(12,101)	(3,945)	(27,816)
	Total Before Interest	(18,973)	(19,506)	(6,360)	(44,840)
	Interest	(7,049)	(4,814)	(1,107)	(12,970)
	Total Refund	**(26,022)**	**(24,321)**	**(7,467)**	**(57,810)**
	Natural Gas				
	Return on Rate Base	(4,142)	(4,258)	(1,388)	(9,789)
	Return of Rate Base	(2,167)	(2,228)	(726)	(5,121)
	Total Before Interest	(6,309)	(6,486)	(2,115)	(14,910)
	Interest	(2,344)	(1,601)	(368)	(4,313)
	Total Refund	**(8,653)**	**(8,087)**	**(2,483)**	**(19,223)**

12 Three primary disagreements drive the difference between Avista's and AWEC's respective recommendations in this case. First, Avista's recommendation accounts only for return *on* rate base and ignores all other components that make up AWEC's recommended refund (including depreciation, interest, and the results achieved from re-running the attrition model). Second, Avista calculates its proposed refund amount over an 11-month period based on its position that the Commission "re-examined" rates in its 2016 general rate case, Dockets UE-160228/UG-160229.[20/] AWEC, conversely, calculates the refund amount over a 2.3-year period to recognize that the Commission dismissed Avista's application in the 2016 rate case and did

[20/] Exh. EMA-9T at 11:4-15.

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not establish new rates in this case.[21/] Third, AWEC's recommended refund does not account for earnings sharing Avista provided over the refund period; Avista's refund recommendation does account for this earnings sharing, although both parties agree that earnings sharing, if it is accounted for, should not offset the refund owed to customers who do not participate in decoupling and, therefore, did not receive earnings sharing.[22/]

A. The Refund Owed to Customers is Appropriately Calculated Over a 2.3-Year Period.

13 All non-Company parties agree the appropriate refund period is 2.3 years.[23/] The reasoning for this uniform conclusion is simple—the rates supported by the underlying "attrition adjustment" were effective for 2.3 years, specifically from January 11, 2016 through April 30, 2018—a fact undisputed by any party (including Avista).

14 Avista attempts to sidestep this problem by arguing that the Commission "reexamined" the Company's rates in its 2016 rate case and "determine[d] that existing rate levels were appropriate."[24/] Not only is that an inaccurate characterization of the Commission's final order in the 2016 rate case, but even if it were accurate it would be irrelevant.

15 Although somewhat unclear, Avista's argument appears to be that the Commission can only make findings based on the evidence in the record before it, and the 2015 attrition adjustment was not part of the record in the 2016 rate case. But as the Commission rightly found in the 2016 rate case, Avista, as the applicant, held the burden to prove that its existing rates were *in*sufficient. While Avista frames the Commission's final order in that case

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21/ Exh. BGM-7T at 15:7-16:11.
22/ Exh. EMA-20TR at 52:11-17.
23/ Exh. BGM-7T at 15:3-6; Exh. DMR-27T at 14:12-16; Exh. CRM-7T at 25:15-19.
24/ Exh. EMA-20TR at 39:18-21.

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as an affirmative finding based on the record of that case that rates were just, reasonable, and sufficient, the Commission's actual finding was the converse of this – that Avista failed to carry its burden of proof that existing rates were insufficient. As the Commission stated: "[T]he evidence in the record before us simply fails to establish that Avista's current rates are not, or will not remain after the conclusion of this case, fair, just, reasonable and sufficient."[25/] Indeed, because Avista failed to carry its burden of proof, the Commission specifically found that it lacked "the authority … to determine fair, just, reasonable, or sufficient rates …."[26/] The Commission, in other words, did not re-establish previously approved rates as Avista suggests; rather, it left existing rates undisturbed because the evidence did not support a change. Avista's attempt to conflate the failure of meeting its burden of proof with actual ratemaking is unavailing in light of the testimony presented and the clear language of Order 06 in Dockets UE-160228 and UG-160229. If Avista's arguments were correct, it would mean that rates could be reset merely by the filing of an application to change rates, regardless of the evidentiary sufficiency of that application.

16 Moreover, Avista does not explicitly claim the attrition allowance attributable to rate base was not applied after December 15, 2016. Therefore, regardless of whether rates were "reexamined" in the 2016 rate case, the reality is that, because rates did not change, the attrition adjustment that was ultimately deemed unlawful as to rate base was in effect for the entire 2.3-year period. As the Court stated clearly and succinctly, "[w]e strike all portions of the attrition allowance attributable to rate base and reverse and remand for the WUTC to recalculate Avista's

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[25/] UE-160228/UG-160229, Order 06 ¶ 74 (Dec. 15, 2016).
[26/] Id. ¶ 111.

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rates without relying on rate base that is not used and useful."[27/] Since it is undisputed that the "attrition allowance attributable to rate base" was a component of Avista's rate structure from January 11, 2016 through May 1, 2018, that entire time period should be the relevant refund period. Furthermore, because the Court required that all portions of the attrition allowance attributable to rate base be stricken, the Commission should follow the plain language of that order and actually strike all relevant portions of the unlawful rate.

B. The Commission Should Consider Only the Information it Had at the Time Order 05 Was Issued.

17 Avista's primary litigation position is that it owes no refunds to customers.[28/] This position is based on the Company's consideration of plant that was in service in 2016 during the rate-effective period. The Commission should reject Avista's invitation to consider this plant because it requires the Commission to consider, for the purpose of setting rates, investments that were not determined to be prudently incurred. Timing is essential here.

18 It is well understood that the Commission's authority is to set just, reasonable, and sufficient rates "to be *thereafter* observed and in force …."[29/] As part of this obligation, the Commission "has the power to review operating expenses incurred by a utility and to disallow those which were not prudently incurred."[30/] This principle applies equally to capital investments.[31/] Crucially, the investments put into service in 2016, that Avista asks the

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27/ Public Counsel at 689.
28/ Exh. EMA-9T at 22:12-14.
29/ RCW 80.28.020.
30/ People's Org. for Wash. Energy Res. v. Utils. & Transp. Comm'n, 104 Wn.2d 798, 810 (1985) ("POWER").
31/ Re Application of Avista Corp. for Authority to Sell Its Interest in the Coal-Fired Centralia Power Plant, Docket Nos. UE-991255/UE-991262/UE-991409, 2000 Wash. UTC LEXIS 252 at *114-*115 (Mar. 6, 2000) (Comm'r Hemstad *dissenting*).

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Commission to consider here, *were reviewed for prudence and allowed into rates*, just not in the 2015 rate case. First, the Commission determined that Avista's rates set in the 2015 rate case remained sufficient to ensure recovery of its costs and a reasonable return in Avista's 2016 rate case.[32/] It then authorized a rate increase for Avista in its 2017 rate case.[33/] Those rates were based, in part, on the investments Avista made in 2016 that it now asks the Commission to effectively incorporate into the rates it established in the 2015 rate case.[34/] In other words, Avista's current rates already allow it to recover the costs of its 2016 investments. Considering those same investments for purposes of establishing a refund from the 2015 rate case would double-count these investments and include them in rates that were determined before these investments were made and their prudence was established, effectively reinstituting the same attrition adjustment the Court struck down.

C. The Commission Should Either Rerun the Attrition Model to Recalculate Avista's Rates or Remove All Rate Base Escalation Assumed in the Attrition Model.

1. AWEC's recommended refund results from re-running the attrition model to incorporate all data in the model "logically on a holistic basis," as the Commission directed in Order 06.

19 As discussed above, in Order 06 the Commission rejected AWEC's request, through its Motion for Clarification, to modify the electric revenue requirement by accounting for Avista's October 29, 2015 power supply update outside of the attrition model. The Commission concluded that a "change in any specific data or assumption used in the attrition

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32/ Docket Nos. UE-160228/UG-160229, Order 06.
33/ Docket Nos. UE-170485/UG-170486, Order 07.
34/ Id. ¶ 3 (noting Avista's test year for the 2017 rate case of January 1, 2016 through December 31, 2016).

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model will invariably affect other data in the model and needs to be assessed *logically on a holistic basis, not on a selective basis inside or outside of the model ….*"[35/]

20 On remand, however, Avista proposes to do precisely what the Commission determined was improper – it requests that the Commission simply remove what it refers to as "attrition-related rate base" without rerunning the attrition model.[36/] As Mr. McGuire testifies, the Court-ordered "recalculation of Avista's rates cannot be accomplished without a recalculation of the Attrition Allowance."[37/]

21 In fact, Avista takes it one step further by incorporating pro forma plant additions into the attrition model, which has the effect of artificially reducing the amount of "attrition-related rate base" and provides further justification for recalculating Avista's rates by rerunning the attrition model.[38/] As Mr. Mullins describes in his testimony, the Commission was presented with two alternative revenue requirements in Avista's 2015 rate case, one based on a pro forma study and one based on an attrition study.[39/] With a few explicitly stated exceptions, such as Project Compass, the revenue requirement based on the attrition study the Commission selected did not specifically include pro forma plant additions. Instead, the escalation in the attrition study "served as a proxy for the pro forma plant additions in the pro forma study."[40/]

22 If the Commission accepts Avista's interpretation of the Court's decision, then the proper approach would be to remove all escalation for net plant in the attrition model and

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35/ Order 06 ¶ 16 (emphasis added).
36/ Exhs. EMA-9T at 15 (Table 1) & EMA-20TR at 6:9-7:15.
37/ Exh. CRM-7T at 20:1-2.
38/ Exhs. EMA-9T at 15 (Table 1) & EMA-20TR at 6:9-7:15.
39/ Exh. BGM-7T at 18-21.
40/ Id. at 19:9-10.

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recalculate Avista's rates based on 2014 test period rate base.[41/] As shown in Tables 2 and 3 of Mr. Mullins' testimony, this would result in removing $90.9 million in attrition-related electric rate base and $50.2 million of attrition-related gas rate base.[42/] Avista, however, does not do this. Instead, it removes the difference between the rate base calculated in the attrition model and the rate base calculated in the pro forma study, meaning that Avista modifies net plant outside of the attrition model by including pro forma adjustments despite them having been excluded and substituted for escalation in the attrition model the Commission used to calculate Avista's revenue requirement.[43/]

23 AWEC does not object to Avista's approach to recalculating rate base by including pro forma adjustments, but does object to Avista's proposal to do this without rerunning the attrition model. Avista's approach, which mixes and matches different revenue requirement studies, yields an inaccurate revenue requirement and ignores the Commission's direction that all inputs to the attrition model "be assessed logically on a holistic basis, not on a selective basis inside or outside of the model …."[44/] The only way to establish an accurate revenue requirement for Avista that includes pro forma plant additions is to perform a full rerun of the attrition model with these additions included.[45/] Doing so yields a larger refund to customers than Avista's selective approach.

41/ Id. at 22:22-23:5; see also, Exh. CRM-7T at 21:16-22:11; Exh. DMR-27T at 22:3-23:13.
42/ Exh. BGM-7T at 21. Using this approach, Mr. McGuire for Staff calculates reductions to authorized revenues of $15.6 million. Exh. CRM-7T at 22:5-6.
43/ Exh. EMA-9T at 15 (Table No. 1).
44/ Order 06 ¶ 16,
45/ Exh. BGM-7T at 28:15-29:5; Exh. CRM-7T at 20:1-2.

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2. If the Commission removes attrition-related rate base outside of the attrition model, it should exclude pro forma plant additions from rate base.

24 As noted above, Avista does not "simply 'strip out' the level of attrition rate base,"[46] as it represents – it instead removes the difference between the rate base calculated in the attrition revenue model and the rate base calculated in the pro forma revenue model. Therefore, if the Commission accepts Avista's reading of the Court's decision, it should effectuate that reading, which would not account for pro forma adjustments. As Mr. Mullins testifies, this approach "would allow the [attrition] model to function as it was designed, by simply removing all escalation not tied to an explicit known and measurable plant addition."[47] Mr. McGuire calculates a refund amount of $15.6 million using this simplified approach.[48]

D. Depreciation Expense is "Attributable" to Rate Base.

25 The Court's decision "str[uck] all portions of the attrition allowance *attributable* to Avista's rate base," and directed the Commission to "recalculate Avista's rates without relying on rate base that is not used and useful."[49] The basis for this decision was the Court's determination that "the WUTC based its calculation of Avista's rate base on projections rather than any specific identifiable plant. Regardless of their accuracy, use of projections in determining rate base ignores the requirement that the WUTC only consider property 'used and useful for service' in Washington."[50] The Court relied heavily on the Supreme Court's decision in POWER, which interpreted RCW 80.04.250 to prohibit inclusion of "property" in rates that is not being used and useful for service: "When calculating a utility's rate base for ratemaking, if

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[46] Exh. EMA-9T at 14:5-6.
[47] Exh. BGM-7T at 22:23-23:2.
[48] Exh. CRM-7T at 21:18-21.
[49] Public Counsel at 689.
[50] Id. at 687.

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the WUTC considers utility plant that 'is neither employed for service nor capable of being put to use for service; … such plant is not 'used and useful' for service and the WUTC exceeds its statutory authority."[51/]

26 There is no dispute that the attrition allowance the Commission authorized that has now been reversed and remanded included an escalation for depreciation expense. It is also well settled that a utility "earns a *return on* its rate base …, and a *return of* its rate base, via depreciation."[52/] As Mr. Mullins testified, "[d]epreciation expenses are calculated as a percentage of the gross plant balances included in rate base. Further, depreciation expenses accrue to accumulated depreciation, which is also a component of rate base."[53/] Recovery of used and useful property, in other words, comes both through return on investments and a return of those investments.

27 In Avista's 2017 general rate case, for instance, the Commission accepted Staff's modification of Avista's plant in service from 2016 "average of monthly averages" ("AMA") to "end-of-period" ("EOP") balances, but rejected Staff's exclusion of depreciation expense on an EOP basis. The Commission found that "depreciation expense should be included to match the rate base balances Staff modified from 2016 AMA balances to EOP balances. Staff's exclusion of the annualized depreciation expense within its adjustment deprives Avista of a return of its investment."[54/] Similarly, in Pacific Power & Light's 2014 rate case, the Commission approved

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[51/] Id. at 683 (quoting People's Org. for Wash. Energy Res. v. Utils. & Transp. Comm'n, 101 Wn.2d 425, 430 (1984)).

[52/] WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-111048/UG-111049, Order 08 ¶ 159 (May 7, 2012) (emphasis in original).

[53/] Exh. BGM-7T at 24:15-18.

[54/] WUTC v. Avista Corp., Dockets UE-170485/UG-170486/UE-171221/UG-171222, Orders 07 & 02 ¶ 203 (Apr. 26, 2018).

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the inclusion of the Merwin Fish Collector Project as a post-test period project and determined that, "[j]ust as in the case of any other plant addition found prudent and otherwise appropriate for inclusion in rate base, the [utility] will earn a return of its investment through depreciation expense and a return on its investment as of the effective date of new rates."[55/] Depreciation expense, therefore, is an essential component of the return a utility receives for used and useful property.

28 Both Avista and Staff dispute AWEC's inclusion of attrition-related depreciation expense in calculating the refund. While Staff acknowledges that AWEC's adjustment has "a rational basis" and "intuitive appeal,"[56/] both Staff and Avista base their positions on the understanding that the escalation for depreciation expense in the attrition model was calculated separately from the escalation for net plant.[57/] Avista justifies its position on its interpretation that the "Court specifically referenced 'attrition rate base,' which in this context refers to the escalated 'Net Plant after ADFIT' balances …."[58/] As Ms. Andrews confirmed at the hearing, though, nowhere in the Court's decision did it refer to rate base as "Net Plant after ADFIT."[59/]

29 Rather, the import of the Court's determination to limit its reversal of Order 05 in this docket to attrition-related rate base (and not operating expenses) is that rate base "represents the total investment in, or fair value of, the facilities of the utility employed in providing service." RCW 80.04.250, in effect at the time Order 05 was issued, required that *property* of a utility be "used and useful for service" before it can be included in rates. The question,

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55/ WUTC v. Pacific Power & Light Co., Dockets UE-140762/UE-140617/UE-131384/UE-140094, Order 08 ¶ 244 (Mar. 25, 2015).
56/ Exh. CRM-14T at 10:11-19.
57/ Id. at 11:10-19; Exh. EMA-20TR at 37:18-25.
58/ Exh. EMA-20TR at 37:8-10.
59/ Tr. at 705:3-9.

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therefore, is not what the technical definition of "rate base" is, but what components of the attrition allowance were designed to provide Avista with recovery of "property" that had not yet been demonstrated to be used and useful for service, in violation of RCW 80.04.250. From this perspective, it is irrelevant that the depreciation escalator was calculated separately from the net plant escalator in the attrition model. All that matters is why depreciation was escalated in the attrition model at all. As Ms. Andrews testified, "[t]here is an escalation of depreciation expense because we know that our annual depreciation expense in the outer years *due to new investment* will increase" and that this increase is specifically tied to a "return of rate base."[60/] Consequently, to effectuate the Court's decision to "recalculate Avista's rates without relying on rate base that is not used and useful," the Commission must strike the portion of the attrition allowance provided for depreciation expense. This escalation represents a "return of" property that was not "used and useful for service" to Avista's customers when Order 05 was issued and, therefore, violated RCW 80.04.250 as it was in effect at the time and as interpreted by the Court in its decision.

E. The Commission Should Apply Interest to the Ordered Refund Amount.

30 During the effective time period the unlawful attrition adjustment as to rate base was in place, Avista received customer revenues it was not legally authorized to receive. Avista made productive use of these revenues it would have otherwise sought through traditional financing. Customers bore the expense of the time value of money while Avista collected, held, and ultimately utilized customer funds. Customers should therefore be appropriately compensated.

[60/] Tr. at 708:8-709:1 (emphasis added).

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31 During cross-examination, Avista witness Elizabeth Andrews testified that, generally speaking, revenues collected would have been used to pay for business expenses, shareholder dividends, or reinvested in the business, which, if revenues had not existed to meet those obligations, would have required financing.[61/] The appropriate amounts of proposed interest rates are found at Table 4 of the Response Testimony of Bradley G. Mullins and as a summary are 9.77% for the period of time after rates established by UE-150204/UG-150205 took effect until the passage of the Tax Cuts and Jobs Act ("TCJA"); 8.51% after the passage of the TCJA, but before the rates in UE-1704085/UG-170486 were implemented; and 8.73% after the rates established by UE-1704085/UG-170486 took effect.[62/] The total interest owing would be $12,970,421 for electric services and $4,312,899 for gas services.[63/]

32 Avista's primary argument against the imposition of interest is the generalized statement that "[t]ypically, interest is added on balances only after an amount is determined to be owed to or due from customers."[64/] However, this argument contradicts RCW 80.040.230, which specifically allows this Commission to assess interest on a refund from an unlawful overcharge, with interest to accrue "from the date of collection."[65/] Because Avista admitted to using collected funds, in a general sense, for normal business purposes, and because Avista further admitted that if cash from revenues had not been available traditional financing options would have been necessary, the Commission should apply interest to the ordered refund amount.

61/ Tr. at 710:7-711:9.
62/ Exh. BGM-7T at 35, Table 4.
63/ Id. at 36:1-2.
64/ Exh. EMA-20TR at 38:17-18 (emphasis in original).
65/ See also Washington Utilities and Transportation Commission v. Pacific Northwest Bell Telephone, et. al. 78 P.U.R.4th 398 (Wash. U.T.C.), citing City of Tacoma v. Sperry & Hutchinson Co., 82 Wash. 393 (1914).

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33 As to the amount of the refund, Avista argues that the quarterly FERC-established interest rate should apply.[66/] AWEC argues that the appropriate refund rate should be Avista's pre-tax cost of capital.[67/] AWEC's proposal represents Avista's pre-tax revenue requirement.[68/] Therefore, the most common-sense number to effectuate a full and fair refund would be a refund reflective of the pre-tax revenue requirement. Otherwise, Avista would receive a windfall on revenue collected based upon the difference between the pre-tax cost of capital rate and FERC's established interest rate. This Commission has the authority to require interest from Avista to the benefit of ratepayers who were unlawfully overcharged. That interest amount should be as reflective of a true refund as possible. AWEC's proposal most closely approximates a full and fair refund that is also reflective of the true cost of money.[69/]

F. The Commission Should Disregard the Impact of the Ordered Refund Amount on Prior Years' Returns.

34 Avista argues that if the ordered refund is implemented, the resultant ROE would be so low that it would unfairly prejudice Avista.[70/] Avista cites to no law or precedent that permits this Commission to review or consider the prior-year(s) impact of a return of unlawfully collected rates on a remand action such as this. As is well established, the Commission sets rates prospectively to provide the utility with an *opportunity* to earn its authorized return.[71/] The utility has many tools at its disposal to increase the likelihood that it earns at or above this

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66/ Exh. EMA-20TR at 38:17-39:6.
67/ Exh. BGM-7T at 34:12-13
68/ Exh. BGM-7T at 34:11-13
69/ Avista opposes even an interest rate that compensates customers for the time value of money. At a minimum, the Commission should order interest at a rate to ensure such compensation, such as the prevailing rate for a long-term treasury bond.
70/ Tr. 718:15-720:18; See also Exh. EMA-20TR at 53-57.
71/ WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-111048/UG-111049, Order 08 ¶ 91 n. 116 (May 7, 2012).

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authorized return, but part of the reason a utility earns a return in the first place is there is never a guarantee of such an outcome. By requesting that the Commission consider the impact of the ordered refund amount on prior years' returns, Avista is effectively asking the Commission to impose an earnings test on the refund amount.

35 Such an earnings test would contravene the Court's order, however. The Court found that the attrition allowance was unlawful with respect to rate base in its entirety and without exception. It therefore required the Commission to "recalculate Avista's rates without relying on rate base that is not used and useful." The Court did not direct the Commission to recalculate these rates only if Avista's earned return in 2016 falls above a certain threshold after accounting for the refunded amounts.

G. If the Commission Considers the Impact of Ordered Refunds on Prior Years' Returns, It Should Order the Refund Identified in Exhibit EMA-24 Over a 2.3-Year Period.

36 Out of an abundance of caution, if this Commission decides to consider the impact of ordered refunds on prior years' returns, it should do so pursuant to Exh. EMA-24R. This exhibit calculates refunds using a Staff method that Avista considers to be "the only acceptable method" if the Commission recalculates the attrition adjustment.[72/]

37 Under Exh. EMA-24R, the amount of refund over the appropriate 2.3 year period is calculated for both electric and gas customers.[73/] The refund for electric customers stands at roughly $14.6 million, with a refund to gas customers of roughly $723,000 (without earnings

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72/ Exh. EMA 20TR at 5:1-10; see also Exh. EMA 24R.
73/ Id.

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sharing).[74/] Avista's complaint regarding the impact of the non-Company parties' recommended refunds is that these levels of refunds would result in earned returns for 2016 and 2017 "either at or far below the 8.22% deemed insufficient by the Commission [in Order 06]."[75/] As Exhibit EMA-25R shows, however, the ROE impact of an ordered refund in the amounts calculated in Exhibit EMA-24R over the proper 2.3-year period far exceeds 8.22%, both with and without earnings sharing.

IV. CONCLUSION

38 For the foregoing reasons, AWEC recommends that the Commission order Avista to refund $57.810 million to its electric customers and $19.223 million to its gas customers.

Dated this 8th day of January, 2020.

Respectfully submitted,

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74/ Notably, the refund amounts generated from Exhibit EMA24-R calculated over a 2.3-year period are similar to the $15.6 million refund Mr. McGuire calculates by removing all net plant escalation from the attrition model. Exh. CRM-7T at 21:16-22:6.

75/ Exh. EMA-20TR at 58:15-17.