BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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

POST-HEARING BRIEF OF PUBLIC COUNSEL

January 8, 2020

TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE COMMISSION SHOULD REJECT AVISTA'S ATTEMPT TO RELY ON ITS 2016 COMMISSION BASIS REPORT AS INAPPROPRIATE RETROACTIVE RATEMAKING 2

A. The Contested Rates Were not Set Using the 2016 CBR nor was the 2016 CBR the Basis of the Court of Appeals' Order. 3

B. Using the 2016 CBR to Recalculate 2015 Rates Would Be Improper Retroactive Ratemaking that Is Prohibited by Established Regulatory Policy and Commission Precedent. 4

C. If Taken to Its Logical Conclusion, Avista's Approach Would Require an Electric Rate Increase, an Absurd Result that even the Company Cannot Support. 5

D. The Commission Should Disregard Staff's EOP 2015 Alternative. 6

III. THE COMMISSION SHOULD CALCULATE REFUNDS FOR THE ENTIRE 2.3 YEARS THE CONTESTED RATES WERE IN EFFECT. 6

IV. THE COMMISSION IS NOT PRECLUDED BY THE COURT OF APPEALS DECISION FROM ADDRESSING THE POWER SUPPLY COST CALCULATION ERROR AND SHOULD CORRECT ITS ERROR IN THIS REMANDED PROCEEDING. 9

A. The Final Calculation of Avista's Electric Rates In Order 05 Did Not Properly Reflect The Power Cost Update and Electric Rates Were Not Adequately Reduced to Capture Avista's Lower Power Costs. 10

B. The Court of Appeals Decision Does Not Preclude the Commission from Addressing the Calculation Error. 12

C. The Commission Has the Discretion and Authority to Reconsider the Power Cost Adjustment Error and Should Do So In the Interests of the Public. 13

V. CALCULATION OF PUBLIC COUNSEL'S RECOMMENDED REFUND 15

A. The Attrition Adjustment Can Be Corrected in Accordance with the Court's Order by Removing the Revenue Requirements Related to the Escalation of Rate Base. 15

B. The Recalculated Rates Must Be Corrected for the Power Supply Update. 16

C. It Is Appropriate to Account for the Earnings Sharing Offset Only if the Attrition Adjustment Is Corrected for the Power Supply Cost Update. 16

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D. Recalculating the Attrition Adjustment by Correctly Modifying the Attrition Model Is a Reasonable Method of Complying with the Court of Appeals Order and Calculating the Refunds Owed to Customers. 17

VI. THE COMMISSION SHOULD REJECT AVISTA'S COMPROMISE POSITION BECAUSE IT FAILS TO CORRECTLY ADDRESS THE ERRORS IN ORDER 05. 17

VII. REFUND ALLOCATION 19

VIII. CONCLUSION 20

TABLE OF AUTHORITIES

State Court Cases

Bank of America, N.A. v. Owens,
177 Wash.App. 181, 311 P.3d 594 (2013).. 13

Hall v. City of Seattle,
24 Wash.App.1d. 357, 602 P.2d 366 (1976)... 14

In the Matter of the Marriage of Rockwell,
157 Wash.App. 449, 238 P.3d 1184 (2010)... 12, 13

In the Matter of the Pers. Restraint of Larry A. Quackenbush,
142 Wash.2d 928, 16 P.3d 638 (2001). 13, 14

Wash. Att'y Gen.'s Office, Pub. Counsel Unit v. Wash. Utils. & Transp. Comm'n,
4 Wash.App.2d 657, 423 P.3d 861 (2018)... 1

Other Jurisdictions

Anchor Cas. Co. v. Bongards Co-Operative Creamery Ass'n,
253 Minn. 101, 91 N.W.2d 122, 73 A.L.R.2d 933 (1958) 14

WUTC Decisions

Wash. Utils. and Transp. Comm'n v. U S WEST Commc'ns, Inc.,
Docket UT-970010, Second Supp. Order (Nov. 7, 1997) 5

Wash. Utils. and Transp. Comm'n v. Avista Corp. d/b/a Avista Utils.,
Dockets UE-150204 and UG-150205, Order 05 (Jan. 6, 2016) 1, 10

Wash. Utils. and Transp. Comm'n v. Avista Corp. d/b/a Avista Utils.,
Dockets UE-160228 and UG-160229, Order 06 (Dec. 15, 2016). 7

Wash. Utils. and Transp. Comm'n v. Puget Sound Energy,
Docket UE-010410, Order Denying Petition to Amend Accounting Order (Nov. 9,
2001) 5

I. INTRODUCTION

1. This remanded proceeding results from Public Counsel's appeal of the Washington Utilities and Transportation Commission's ("Commission") Order 05 in this docket, which established Avista's 2015 electric and gas rates and authorized an attrition adjustment for escalated rate base and operations and maintenance costs.[1] On appeal, Public Counsel contested the inclusion of rate base that was not used and useful in the attrition adjustments adopted by the Commission in Order 05.[2] Public Counsel also challenged the Commission's failure to correct a calculation error pertaining to the update of power supply costs included in the attrition adjustment.[3] The Court of Appeals of Washington, Division Two ("Court of Appeals" or "Court") reversed and remanded the Commission's Order 05, concluding,

> Because the projections of future rate base were not 'used and useful' for service in Washington, we conclude that the WUTC may not base Avista's rates on them. Accordingly, the WUTC erred in calculating Avista's electric and natural gas rates. The WUTC order provided one lump sum attrition allowance without distinguishing what portion was for rate base and which was for O&M expense or other considerations. We strike all portions of the attrition allowance attributable to Avista's rate base and reverse and remand for the WUTC to recalculate Avista's rates without relying on rate base that is not used and useful.[4]

2. In response to the Court's order to recalculate Avista's rates, Avista contends that no refund is owed despite the fact customers overpaid through unlawfully calculated rates for over two years.[5] To achieve this result, Avista crafts a set of arguments intended to shield the company from any consequence of these unlawful rates. First, Avista attempts to erase the error

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[1] *Wash. Utils. and Transp. Comm'n v. Avista Corp. d/b/a Avista Utils*., Dockets UE-150204 and UG-150205, Order 05 at 1–2 (Jan. 6, 2016).

[2] Donna M. Ramas, Exh. DMR-27T, 5:8–11.

[3] *Id.* at 5:11–13.

[4] Ramas, Exh. DMR-35 at 31, *Wash. Att'y Gen.'s Office, Pub. Counsel Unit v. Wash. Utils. & Transp. Comm'n,* 4 Wash.App.2d 657, 423 P.3d 861 (2018).

[5] Testimony of Elizabeth M. Andrews, Exh. EMA-9T at 3:2–3.

using a tactic tantamount to retroactive ratemaking by comparing the amount of rate base contained in the contested rates to its 2016 Commission Basis Report (CBR). Second, Avista argues that the time period to calculate any refunds should be limited to 11 months, despite the fact these customers were over paying for 2.3 years due to these errors. Third, Avista dodges responsibility for contested power supply costs by erroneously arguing that the issue cannot be addressed in this remand. Finally, Avista argues that any refunds must be offset by the amount it refunded to customers though the decoupling earnings sharing mechanism.

3. In this remanded proceeding, the Commission should determine the refund amounts owed to Avista's customers as a result of: (1) including the escalation of rate base in the attrition studies; (2) the failure to correctly incorporate the updated power supply costs in the electric revenue requirement, and (3) accounting for the full 2.3 years the incorrect rates were in effect. Public Counsel respectfully requests the Commission to reject Avista's primary recommendation of zero refund to its customers. Public Counsel also requests the Commission to reject Avista's "compromise" position which would return only $1.326 million to Avista's electric customers and $1.582 million to its gas customers. For the reasons stated in this brief and in the testimony of Public Counsel's expert witnesses, Public Counsel requests that the Commission to order Avista to refund $36.2 million to its electric customers and $4.9 million to its gas customers.

II. THE COMMISSION SHOULD REJECT AVISTA'S ATTEMPT TO RELY ON ITS 2016 COMMISSION BASIS REPORT AS INAPPROPRIATE RETROACTIVE RATEMAKING

4. Avista's primary strategy in this remand is to shift the focus away from the error embedded in the rates set in its 2015 rate case. Rather than addressing the Court of Appeals' order to recalculate the 2015 rates correctly, Avista essentially attempts to recalculate the rates

according to the rate base contained in its 2016 Commission Basis Report ("CBR"). The Company compares the actual electric rate base contained in the 2016 CBRs to the escalated electric rate base included in the attrition studies in the 2015 rate case. The Company argues that it does not owe any refunds to customers because the actual 2016 amounts exceeded the attrition electric rate base.[6] After applying the same approach to Avista's gas rates, Avista acknowledges that the natural gas escalated attrition rate base is less than the actual level 2016 rate base for the natural gas operations, but asserts that the resulting refund would have been entirely offset by the natural gas decoupling earnings sharing that occurred for 2016.[7] Avista's attempt to use the 2016 CBR data is a sleight-of-hand trick to keep revenue from customer rates that they should not have collected in the first place.

A. The Contested Rates Were not Set Using the 2016 CBR nor was the 2016 CBR the Basis of the Court of Appeals' Order.

5. Avista's use of the 2016 CBR and its contention that no refunds are due to customers is unreasonable and should be rejected outright. Rates were determined in this docket based on a modified historic test year with adjustments for known and measurable conditions at the time.[8] The known and measurable adjustments included updating the test year to reflect the results of the 2014 CBRs and the inclusion of major post-test year plant additions placed into service through June 30, 2015.[9] The Commission applied attrition adjustments to both the electric and natural gas operations as succinct adjustments to the modified historic test year with known and measurable adjustments.[10] At the time the Commission's Order 05 was issued on January 6,

[6] Andrews, Exh. EMA-9T at 18:7–19:2.
[7] *Id.* at 22:1–11.
[8] Ramas, Exh. DMR-27T at 12:5–10.
[9] *Id.*
[10] *Id.*

2016, the 2016 CBRs were not available and could not have been used as a basis for determining the rates that went into effect as a result of this docket. Similarly, the 2016 CBR was not included in the evidentiary record upon which the Court of Appeals based its review. The Court, therefore, did not nor could not envision the use of such information when it ordered the Commission to recalculate the contested rates.

B. Using the 2016 CBR to Recalculate 2015 Rates Would Be Improper Retroactive Ratemaking that Is Prohibited by Established Regulatory Policy and Commission Precedent.

6. Determining the level of refunds based on the 2016 CBR rather than the evidentiary record of the original docket is neither reasonable nor appropriate. The appeal that ordered this remand was not based on an assertion that Avista's rates were insufficient. The Court determined the rates were set unlawfully and incorrectly in the 2015 rate case, and, as a result, remanded the proceeding and ordered the rates to be recalculated correctly. Avista is essentially arguing that it spent more in 2016 than what was included in rates and that it should be retroactively compensated for those additional costs by being allowed to keep the refunds owed to customers. Whether or not the rate base assumptions in Avista's 2015 rate case matched the actual level of rate base in 2016 is irrelevant to the issue at hand. Recalculating the 2015 rates to account for Avista's actual 2016 rate base spending rather than correcting the errors as ordered by the Court would amount to retroactive ratemaking and thwart the Court's order.

7. As the Commission has previously held, "[t]he Commission agrees that retroactive rate making, as thus understood, is extremely poor public policy and is illegal under the statutes of

Washington State as a rate applied to a service without prior notice and review."[11] The Commission should reject Avista's arguments regarding the use of the 2016 CBR to determine the level of rate base at issue in this proceeding and prevent the Company from keeping the refunds owed to customers.

C. If Taken to Its Logical Conclusion, Avista's Approach Would Require an Electric Rate Increase, an Absurd Result that even the Company Cannot Support.

8. When the 2016 CBR is used to set the level of rate base considered "used and useful," it becomes glaringly obvious that Avista's approach would be akin to retroactive ratemaking. Avista states that the actual 2016 rate base that Avista recorded exceeds the level of electric rate base assumed in the 2015 rate case for the same period by $100 million.[12] The Company then states, "In a perfect regulatory construct, the challenged 2015 electric rates should actually be increased on remand to reflect higher levels of actual used and useful plant than were assumed in the attrition study. We, of course, are not advocating such a result here."[13]

9. Although Avista stops short of requesting a surcharge to recover 2016 actual rate base, this comparison approach to addressing the errors in the attrition adjustment would compensate the Company for rate base that was not included in the 2015 rates case by taking the costs out of the refund that is owed to Avista's customers. This approach does not recalculate the 2015 rates to remove rate base that is not used and useful and thwarts the Court of Appeals order to do so.

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[11] *Wash. Utils. and Transp. Comm'n v. Puget Sound Energy*, Docket UE-010410, Order Denying Petition to Amend Accounting Order ¶ 7 (Nov. 9, 2001) (citing *Wash. Utils. and Transp. Comm'n v. U S WEST Commc'ns, Inc*., Docket UT-970010, Second Supp. Order at 10 (Nov. 7, 1997)).

[12] Andrews, Exh. EMA-9T, 18:7–13.

[13] *Id.* at 18:15–19:2.

D. The Commission Should Disregard Staff's EOP 2015 Alternative.

10. Staff rejects Avista's use of actual 2016 rate base,[14] but states that the 2015 end of period amounts ("2015 EOP") should be applied if the Commission determines it is appropriate to consider actual rate base amounts.[15] During the evidentiary hearing, Staff clarified that it does not support the use of 2015 EOP[16] but proposes the Commission use the 2015 EOP rather than the 2016 rate base if actual rate base is examined at all.[17]

11. Using the 2015 EOP rate base to recalculate rates, however, would also be improper for the same reason as using the 2016 CBR. The contested rates were not set using 2015 EOP rate base amounts. It would be an improper form of retroactive ratemaking to base the recalculated rates on anything other than what was originally included in Order 05.

III. THE COMMISSION SHOULD CALCULATE REFUNDS FOR THE ENTIRE 2.3 YEARS THE CONTESTED RATES WERE IN EFFECT.

12. The rates that are the focus of this remand went into effect on January 11, 2016, and were not adjusted until May 1, 2018, when new rates went into effect as a result of the Company's 2017 rate case, Dockets UE-170485 and UG-170486. Any refund resulting from this remand should take into account the full 2.3 years that ratepayers were over paying for the incorrectly calculated rates. Avista argues that the time period at issue in this remand proceeding is only the 11-month period spanning from January 11, 2016, to December 15, 2016, and contends that its

[14] Testimony of Chris R. McGuire, Exh. CRM-7T at 27:11–17.

[15] *Id.* at 28:14–19.

[16] McGuire, TR. 737:4–12. *See also* McGuire, Exh. CRM-7T at 28:20–29:6 ("It should be noted, however, that actual rate base on December 31, 2015, does not reflect the rate base calculated in accordance with the Commission's rules on pro forma adjustments. Commission rules require that pro forma adjustments be known and measurable and not offset by other factors. Further, practicality dictates that pro forma plant additions subject to review in a general rate case be limited to those that are "major" and in-service early enough in the proceeding to allow for a full audit and review." (footnotes omitted)).

[17] McGuire, Exh. CRM-7T at 28:14–19.

2016 rate case, Dockets UE-160228 and UG-160229, reset the rates based on fresh evidence and a new test period.[18] Avista also asserts that the Commission did not rely on the 2015 case, but rather, relied "on fresh data based on new information within the 2016 case."[19]

13. The Commission should not be swayed by Avista's erroneous interpretation of Order 06 of its 2016 rate case. The Commission did not change base rates charged to Avista's customers based on Avista or any party's evidence. In its Order 06, the Commission found,

> Avista failed to carry its burden to prove that its existing rates for electric service and natural gas service provided in Washington State are insufficient to yield reasonable compensation for the service rendered or are otherwise in any manner not fair, just, reasonable, and sufficient. The Commission accordingly has neither the authority, nor an obligation, to determine fair, just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be hereafter observed and in force or to fix the same by order.[20]

The Commission ordered, "Avista's existing fair, just, reasonable, and sufficient rates for electric service and natural gas service will remain in effect prospectively from the date of this Order."[21] Therefore, the rates set by the Commission in its Order 05 in this docket, which are subject to remand, remained in effect until new rates were established by the Commission in Avista's 2017 rate case. Rates from Avista's 2017 rate case took effect on May 1, 2018. Thus, the time period covered by the contested rates in this remand proceeding is January 11, 2016, through April 30, 2018.

14. The Commission explicitly rejected Avista's proposed tariffs[22] and did not disturb the existing rates[23] in the 2016 rates case. Despite the Commission's unambiguous language in

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[18] Andrews, Exh. EMA-9T at 11:7–8.
[19] *Id.*at 11:10–12.
[20] *Wash. Utils. and Transp. Comm'n v. Avista Corp. d/b/a Avista Utils*., Dockets UE-160228 and UG-160229, Order 06, ¶ 111 (Dec. 15, 2016).
[21] *Id.* ¶ 115.
[22] *Id.* ¶ 114.
[23] *Id.* ¶ 115.

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Order 06 of its 2016 rate case, Avista argues that the contested 2015 rates were reset by its 2016 rate case because the Company, Staff, and the Industrial Customers of Northwest Utilities ("ICNU")[24] all made a "fresh examination" of the rate base and presented pro forma and attrition rate base amounts in excess of the 2015 rate base.[25] Avista's reliance on parties' rate base proposals is misleading. The "fresh examination" of the rate base by parties is irrelevant because the Commission ultimately declined to apply any party's proposed revenue requirement. Avista ignores the fact that the Commission did not adopt any of the revenue requirements proposed by the parties.

15. Avista further attempts to obscure the issue by highlighting the fact no party appealed Order 06 from the 2016 rate case, as if that fact negates the reality that Avista's 2015 rates remained in effect. Furthermore, as evidenced by this remand proceeding, Public Counsel appealed Order 05 and the rates set in the 2015 rate case. Order 06 in the 2016 rate case did not disturb these contested rates, and the order was issued while the 2015 rate case appeal was pending. It is unclear if Avista is suggesting that a party should have appealed the same rates a second time after Order 06 was issued.

16. The Commission should disregard Avista's misleading arguments. The rates set by Order 05 remained in effect until May 1, 2018, the effective date of Avista's rates set in its 2017 rate case. Any refund resulting from this remand should take into account the full 2.3 years that ratepayers were overpaying the incorrectly calculated rates.

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[24] ICNU is now the Alliance for Western Energy Consumers ("AWEC").

[25] Andrews, Exh. EMA-9T at 12:10–14:4.

IV. THE COMMISSION IS NOT PRECLUDED BY THE COURT OF APPEALS DECISION FROM ADDRESSING THE POWER SUPPLY COST CALCULATION ERROR AND SHOULD CORRECT ITS ERROR IN THIS REMANDED PROCEEDING.

17. On appeal, Public Counsel argued that the electric attrition adjustment in Order 05 did not correctly include the impact of the power supply update as the resulting revenue requirement did not reflect the $12.3 million reduction that would be caused by the update.[26] The Court of Appeals ordered the case be remanded to the Commission, stating "We strike all portions of the attrition allowance attributable to Avista's rate base and reverse and remand for the WUTC to recalculate Avista's rates without relying on rate base that is not used and useful"[27] but did not reach a conclusion regarding the power supply cost stating, "Because we resolve the case on other grounds, we do not reach the alleged computational errors and do not discuss them further."[28] The Court did not reach any findings of fact or conclusions of law regarding the computational errors in its decision. Avista argues that, because the court did not specifically address the issue, power supply costs are outside the scope of this remand, and it would be an error of law to correct the attrition adjustment for the power supply costs.[29] Avista's interpretation of the Court decision, however, is flawed. The Commission is not precluded from addressing the power cost error in this remanded proceeding and, indeed, public interest demands that this error be corrected.

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[26] Ramas, Exh. DMR-27T at 5:11–7:19.
[27] Ramas, Exh. DMR-35 at 31.
[28] *Id.* at 19, n.13.
[29] David Meyer, TR. 683:15–21. *See also* Andrews, Exh. EMA-9T at 5:1–6:8.

A. The Final Calculation of Avista's Electric Rates In Order 05 Did Not Properly Reflect The Power Cost Update and Electric Rates Were Not Adequately Reduced to Capture Avista's Lower Power Costs.

18. In Order 05 of this docket, the Commission adopted Staff's methodology for calculating the attrition adjustment, subject to modifications, as the basis for developing its attrition adjustment.[30] The Commission also accepted Avista's updated power cost information and incorporated the power cost update into Staff's attrition model.[31] Staff's attrition revenue requirement supported an electric attrition revenue requirement reduction of $6.5 million, and the Commission's modifications in Order 05, taken together, should have resulted in a $16.6 million attrition allowance and an electric revenue requirement reduction of $19.8 million.[32] Order 05 however, determined that Avista's revenue requirement should be reduced by $8.1 million.[33] With the modifications ordered by the Commission, it is mathematically impossible to reach a rate reduction of $8.1 million as ordered by Order 05 and confirmed by Order 06.

19. The mathematical impact of the Commission's rulings in Order 05 and the actual revenue requirement reduction ordered is due primarily to power supply cost update,[34] a $12.26 million reduction to revenue requirement that should have also been reflected in the attrition study.[35] The final calculation of Avista's electric rates did not properly reflect the power cost update, meaning that the electric rates were not adequately reduced to capture Avista's lower power costs. Although the UTC attempted to include the power cost in the attrition model, this was

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[30] Order 05, ¶ 135 and n.201. Staff's attrition revenue requirement was supplemented by Christopher McGuire at hearing and later provided as Exhibit CRM-2 Revised, supporting an attrition revenue requirement reduction of $6.5 million.

[31] Joint Motion for Clarification of the Industrial Customers of Northwest Utilities and Public Counsel at 4, Table 1 (henceforth "Joint Motion for Clarification").

[32] *Id.* ¶ 6.

[33] Order 05, ¶ 140.

[34] Ramas, Exh. DMR-27T at 8:20–24.

[35] *Id.* at 7:10–16.

ineffective. The UTC inserted the data provided by Avista in the power cost update into the attrition model, but the data did not lower the revenue requirement.[36]

20. There can be little dispute that parties believe there was a discrepancy in the total revenue requirement reduction ordered by the Commission in Order 05 and the mathematical calculation of the attrition adjustment. Prior to Public Counsel's petition for judicial review, Public Counsel and ICNU filed a Joint Motion for Clarification of Order 05, and Staff filed a Motion to Reconsider the order to review the calculation of Avista's overall revenue requirement to ensure the ordered adjustments were properly incorporated.[37] In response to the appeal, even the Commission itself agreed that Order 05 should be remanded to address the power cost update. In its Brief of Respondent Washington Utilities and Transportation Commission, the Commission stated,

> The Commission agrees with Public Counsel that this Court should partially remand the matter for a supplementary evidentiary hearing on the power cost update. Staff's attrition study was a complex Excel model "populated by myriad data" that seems to have confused Public Counsel and other parties. AR 1143; see AR 1145-19 51 (summary of various post-order motions seeking clarification of the Commission's final revenue requirement calculation). Because the parties may not have understood the model's proper functioning, the Commission believes it would be beneficial to reopen the administrative record to reevaluate the implementation of the power cost update. It therefore respectfully requests that this Court remand for that limited purpose.[38]

21. Public Counsel addresses the error by directly removing the power supply costs from the attrition adjustment while Staff[39] and AWEC[40] resolve the power cost error by recalculating the entire attrition allowance through the attrition model. While the parties address this error using

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[36] Order 06, ¶ 15.
[37] Commission Staff's Motion to Reconsider, ¶ 4 (henceforth "Staff Motion to Reconsider").
[38] Ramas, Exh. DMR-37 at 43.
[39] McGuire, Exh. CRM-14T at 6:12–15.
[40] Response Testimony of Bradly G. Mullins, Exh. BGM-7T at 28:10–29:5.

different methodologies and may not agree with other parties' approaches, it is clear that these parties believe that recalculating the rates correctly in this remand requires the Commission to address the mathematical discrepancy presented in Order 05. Avista does not directly address the calculation error or refute the assertion that Order 05 was flawed, but merely argues that issue cannot be addressed in this remand.[41]

B. The Court of Appeals Decision Does Not Preclude the Commission from Addressing the Calculation Error.

22. Avista erroneously argues that, because the court did not specifically address the issue, power supply costs are outside the scope of this remand, and it would be an error of law to correct the attrition adjustment for the power supply costs.[42] Remand orders from appellate courts that do not specifically address all issues do not automatically preclude those issues from being addressed. Washington courts have held that lower courts must strictly comply with directives from an appellate court which leave no discretion to the lower court, but, in instances where the appellate court does not address every issue, the appellate court expects the lower court to exercise its discretion to decide any issue necessary to resolve the case on remand.

23. For example, *In re Marriage of Rockwell,* a woman filed for dissolution of marriage and the Superior Court of King County granted the dissolution and divided property 60 percent to the woman and 40 percent to her husband.[43] Her husband appealed, and the woman cross appealed. The Court of Appeals affirmed in part and reversed in part, and remanded the case back to the Superior Court. On remand, the Superior Court again divided the community property portion of the pension 60/40 because it believed that vague wording in the original Court of Appeals

[41] Meyer, TR. 683:15-21.
[42] Meyer, TR. 683:15-21. *See also* Andrews, Exh. EMA-9T at 5:14–16.
[43] *In the Matter of the Marriage of Rockwell,* 157 Wash.App. 449, 238 P.3d 1184 (2010).

decision, which simply stated "we remand for further proceedings" did not leave the court any discretion to do otherwise. The Court of Appeals clarified,

> The court regrets that the earlier opinion created confusion and provided the parties with a clear basis to argue the positions taken on remand. However, the language "we remand for 'further proceedings' " signals this court's expectation that the trial court will exercise its discretion to decide any issue necessary to resolve the case. The opinion did not mandate that the trial court preserve the 60/40 overall division initially ordered. We did not intend to bind the trial court on remand to only the two alternatives argued by counsel. We intended that the trial court exercise its discretion on remand. We cannot ascertain from this record that it did so, and for this reason, we vacate the judgment and remand for further proceedings.[44]

24. Washington courts further clarified the *Rockwell* reasoning in *Bank of America, N.A., v. Owens* stating, "While a remand "for further proceedings" signals the Court of Appeals' expectation that the trial court will exercise its discretion to decide any issue necessary to resolve the case, the trial court cannot ignore the appellate court's specific holdings and directions on remand."[45] In other words, while the Commission must recalculate rates without relying on rate base that is not used and useful, it can and should exercise its discretion to decide any issue necessary to resolve the case. In this instance, the Court of Appeals specifically stated that it did not need to address the power cost issue because it could remand the case based on other grounds. It did not make a specific holding regarding power costs and, therefore, the Commission should exercise its discretion and address the issue now.

C. The Commission Has the Discretion and Authority to Reconsider the Power Cost Adjustment Error and Should Do So In the Interests of the Public.

25. Agencies have the authority to reconsider decisions when errors have been made. For example, the Washington Supreme Court held in *In re Matter of Quackenbush* that

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[44] *Id.* at 453-454 (internal citations omitted).

[45] *Bank of America, N.A. v. Owens*, 177 Wash.App. 181, 189, 311 P.3d 594 (2013).

administrative agencies have the authority to correct an obvious mistake when correction can be done promptly and fairly, even when the agency has made a final decision.[46] Similarly, in *Hall v. City of Seattle*, the Court of Appeals held that "it will ill serve the public interest to deny an agency the right to correct its own obvious mistakes when that can be done promptly and fairly."[47] The Court recognized an exception to the general rule that an agency does not have the authority to reopen and reconsider a final decision in absence of a specific statute, charter or ordinance authorizing it. *Id*. Citing a Minnesota case, the Court stated: "Where through fraud, mistake or misconception of facts the commissioner enters an order which he promptly recognizes may be in error, there is no good reason why, on discovering the error, he should not, after due and prompt notice to the interested parties, correct it."[48]

26. Here, like in *Hall v. City of Seattle,* the Commission has recognized there may be an error in Order 05, as evidenced by its recommendation in its appellate court brief to remand the order to address the power cost update.[49] After having recognized the potential error and recommended the issue for remand, it would ill serve the public interest to simply avoid the contested issue now by agreeing with Avista that the power cost update is outside the scope of this remand. Avista's customers have been paying more in rates than they should have for 2.3 years due to this power cost update error, and they will be further harmed if the Commission fails to address this dispute now.

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[46] *In the Matter of the Pers. Restraint of Larry A. Quackenbush,* 142 Wash.2d 928, 937-938, 16 P.3d 638 (2001).

[47] *Hall v. City of Seattle,* 24 Wash.App.1d. 357, 369, 602 P.2d 366 (1976).

[48] *Id.* (citing *Anchor Cas. Co. v. Bongards Co-Operative Creamery Ass'n*, 253 Minn. 101, 106, 91 N.W.2d 122, 126, 73 A.L.R.2d 933 (1958)).

[49] Ramas, Exh. DMR-37 at 43.

V. CALCULATION OF PUBLIC COUNSEL'S RECOMMENDED REFUND

27. Public Counsel recommends that the Commission order Avista to refund $36,189,000 to its electric customers and $4,907,000 to its gas customers. These totals take into account the impacts of the escalation of rate base in the attrition studies, correctly account for the power cost update, apply a limited earnings sharing credit, and refunds customers for the entire 2.3 years they were charged with incorrect rates. Public Counsel explained its refund calculations fully in the testimony and workpapers of its expert witness, Donna Ramas, but will summarize the recommendations below.

A. The Attrition Adjustment Can Be Corrected in Accordance with the Court's Order by Removing the Revenue Requirements Related to the Escalation of Rate Base.

28. In order to correct the attrition adjustment for the escalation of rate base, Ms. Ramas started with Avista's attrition rate base calculation for electric and gas operations. Avista calculated that the electric attrition study included $52.53 million and the gas attrition study included $38.09 million for the escalation of rate base prior to the application of the revenue growth factors.[50] Ms. Ramas applied the revenue growth factors and calculated the amount of revenue requirement related to the escalation of rate base for both electric[51] and gas attrition amounts.[52] Ms. Ramas then calculated the impact across the full 2.3 years that the 2015 rates were in effect and determined that the refund solely due to the escalation of rate base should be $11.996 million for electric customers[53] and $8.71 million for gas customers.[54]

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[50] Ramas, Exh. DMR-27T at 15:18–16:13.
[51] Ramas, Exh. DMR-28.
[52] Ramas, Exh. DMR-29.
[53] Ramas, Exh. DMR-28.
[54] Ramas, Exh. DMR-29.

B. The Recalculated Rates Must Be Corrected for the Power Supply Update.

29. As explained above, the attrition adjustment included in Order 05 improperly accounted for the power supply update, and the Commission can and should address the error in this remand. The additional refund owed to Avista's electric customers by correcting for the power supply cost update is $28.21 million.[55]

C. It Is Appropriate to Account for the Earnings Sharing Offset Only if the Attrition Adjustment Is Corrected for the Power Supply Cost Update.

30. Avista contends that if a refund to customers is required by the Commission, the amount should be adjusted to reflect the revenue sharing that has been returned to customers through the decoupling earnings sharing mechanism.[56] The failure to properly include the $12.26 million power supply cost update in the electric revenue requirements would have contributed to Avista's excess earnings above its authorized rate of return for the electric operations.[57] Unless refunds are issued to Avista's electric ratepayers to correct for the power cost update, the amounts refunded to ratepayers should not be offset by any earnings sharing that occurred during the rate effective period. Avista's shareholders benefitted from the failure to correctly account for the power supply cost update and should not be further rewarded by reducing customer refunds by the earnings sharing amounts.

31. Once the attrition adjustment is corrected to account for the improperly escalated rate base, the power supply cost update, earnings sharing, and a rate effective period of 2.3 years, the total refund owed to Avista's electric customers is $36,189,000, and the total refund owed to gas customers is $4,907,000.

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[55] Ramas, Exh. DMR-31.

[56] Andrews, Exh. EMA-9T at 17:12–18.

[57] Ramas, Exh. DMR-27T at 24:11–14.

D. Recalculating the Attrition Adjustment by Correctly Modifying the Attrition Model Is a Reasonable Method of Complying with the Court of Appeals Order and Calculating the Refunds Owed to Customers.

32. Staff and AWEC took different approaches to complying with the Court of Appeals Order than Public Counsel. Both Staff and AWEC revised the attrition adjustments by recalculating the attrition allowance using the attrition models. Both parties modified the attrition models using their understanding of the adjustments described in the Commission's Order 05 and to address the changes required by the Court Order.[58] Public Counsel does not object to the approaches taken by Staff and AWEC and agrees that recalculating the attrition allowance using an attrition model is a reasonable approach to complying with the Court Order and determining the amount customers should be refunded.

VI. THE COMMISSION SHOULD REJECT AVISTA'S COMPROMISE POSITION BECAUSE IT FAILS TO CORRECTLY ADDRESS THE ERRORS IN ORDER 05.

33. Avista proposes an alternative "Compromise Position"[59] that does not properly account for the escalated rate base in its analysis, does not include any adjustments for power supply costs, and accounts for only 11 months of the rate effective period. To add insult to injury, Avista also reduces the resulting refunds with earnings sharing offsets. Avista's resulting refund is $1.326 million for electric customers and $1.582 million for gas customers.

34. Avista presented the calculation of its alternative position in its opening testimony.[60] Similar to Ms. Ramas' calculations, described above, Avista removed the level of attrition rate base from the 2016 rate year.[61] Avista, however, calculated the difference between the total

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[58] *Id.* at 4:6–9.
[59] Andrews, Exh. EMA-20TRr at 6:9–7:5.
[60] Andrews, Exh. EMA-9T at 14:5–17:11.
[61] *Id*.

attrition adjusted rate base and the adjusted pro forma rate base identified by the Commission in its Order 05 to set the level of attrition rate base upon which it would calculate the refunds owed to customers.[62] Avista's calculation went beyond removing the escalation of rate base from the attrition studies and improperly reduces the attrition related rate base, which reduces the refund that will be returned to customers. As explained by Ms. Ramas,

> It is not reasonable, as the Company proposes to compare the amount of rate base included in the attrition study to the amount of rate base included in the modified historic test year with known and measurable adjustments for purposes of determining the impact on revenue requirements resulting from the escalation of rate base incorporated in the attrition study. In its Order 05, the Commission determined the revenue requirement for the electric and natural gas operations based on a modified historical test year with known and measurable pro forma adjustments... A single attrition adjustment was applied by the Commission in determining the appropriate decrease in the overall electric operations revenue requirements. Similarly, the Commission applied a single attrition adjustment in determining the appropriate increase in the overall revenue requirements for the natural gas operations.
>
> The attrition adjustment is based on the difference between the revenue requirement under the attrition study and the revenue requirement using the modified historical test year with known and measurable pro forma adjustments. Thus, for purposes of determining the impact of the escalation of rate base incorporated in the attrition studies, one should simply reduce the attrition adjustment by the amount included in the resulting attrition revenue requirement for the escalation of rate base. This would result in a revised attrition adjustment for the electric operations and a revised attrition adjustment for the natural gas operations...
>
> Since the attrition adjustment is made to the modified historic test year with known and measurable adjustments, revenue requirement still includes the known and measurable post-test year plant addition adjustments allowed by the Commission in Order 05, even after the attrition adjustment is revised to exclude the escalation of plant additions.[63]

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[62] *Id.*

[63] Ramas, Exh. DMR-27T at 22:6–23:13.

35. The added failure to include any adjustment for power supply costs and account for the full 2.3-year rate effective period and earnings sharing offset results in a rate and refund that is unjust and unreasonable that should be disregarded by the Commission.

VII. REFUND ALLOCATION

36. Public Counsel recommends that any refunds ordered by the Commission be returned to customers based on individual customer rate revenue during the relevant rate-effective period.[64] Public Counsel's expert witness, Glen Watkins, provided an example of how the refunds should be applied to rate classes in his exhibits.[65] If the Commission includes an offset to refunds for amounts refunded to customers through the earnings sharing mechanism, for customers other than industrial customers on Schedules 25 and 41-4, the earnings sharing amounts provided on an individual customer basis should serve as an offset to the refund received.[66]

37. AWEC proposes a refund distribution approach that is conceptually similar to Public Counsel's recommendation.[67] Like Public Counsel, AWEC recommends that refunds be distributed amongst customers based on the level of revenues contributed, but proposes to provide refunds on a forward-looking basis based on revenues and billing determinants in Avista's pending 2019 rate case.[68] Public Counsel finds its approach more equitable in that it returns refunds to individual customers based on the actual excess revenue each customer contributed during the rate effective period, including customers who have since left Avista's

[64] Response Testimony of Glen A. Watkins, Exh. GAW-1T at 2:18–20.
[65] Watkins, Exh. GAW-3.
[66] Watkins, Exh. GAW-1T at 3:5–7.
[67] Watkins, Exh. GAW-4T at 1:14–17.
[68] Mullins, Exh. BGM-7T at 32:6–18.

system.[69] To the extent Avista does not have the appropriate records on which to base the per-customer refunds, AWEC's approach would be reasonable.[70]

VIII. CONCLUSION

38. Avista has created a shield of misleading and erroneous arguments to protect the Company from the impacts of the Court's order. The Commission should not be swayed by the Avista's attempts to escape from any and all consequences of its incorrectly set rates. Avista's customers paid more than they should have for unlawful and incorrect rates for more than two years. Equity and the public interest require that Avista's customers be refunded the full amount owed to them. The Commission should correct the attrition adjustment by removing the amounts related to the escalation of rate base, correctly including the power supply cost update, and extending the calculation of refunds through the 2.3 years the erroneous rates were in effect. In total, Public Counsel requests that the Commission order Avista to refund $36.2 million to its electric customers and $4.9 million to its gas customers.

DATED this 8th day of January 2020.

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[69] Watkins, Exh. GAW-4T at 2:5–10.
[70] *Id.* at 2:13–16.