BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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

POST-HEARING BRIEF ON BEHALF OF COMMISSION STAFF

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I. INTRODUCTION

1 This proceeding is before the Washington Utilities and Transportation Commission (Commission) on remand from the Court of Appeals "to recalculate Avista's rates without relying on rate base that is not used and useful."[1] The Court determined that projections of future rate base in the "attrition allowance" that the Commission approved for Avista Corporation d/b/a Avista Utilities ("Avista" or "Company") were not "used and useful" and struck all portions of the attrition allowance attributable to Avista's rate base. The attrition allowance is a complex model, with interrelated cells. Discrete changes may have broad effects. To most accurately reflect the Commission's original decision and, at the same time, implement the mandate from the Court, Commission Staff (Staff) carefully incorporated the Commission's determinations from its final order,[2] zeroed out the rate base escalator, and recalculated the attrition allowance. By recalculating the attrition allowance from the ground up, Staff avoided introducing any unintended errors from linked cell calculations. Staff then plugged the attrition allowance into the pro forma revenue requirement. The resulting overall revenue requirement is lower than the revenue requirement in the Commission's Order 05, which means that refunds are due customers.

2 The amount of the refunds due is the difference between the two revenue requirements, calculated over the period the rates were in effect. The rates that the Court found were improper were in effect until the Commission set new rates for Avista in its 2017 general rate case (GRC), which went into effect May 1, 2018. Although Avista filed a GRC in 2016, the Commission determined that the Company had not met its burden and declined

[1] *Wash. Att'y Gen.'s Office, Pub. Counsel Unit v. Wash. Utils. & Transp. Comm'n*, 4 Wn. App. 2d 657, 689 (2018) (*Court Remand Decision*).
[2] Order 05, entered January 6, 2016.

to set new rates. Accordingly, the rates set in January of 2016 were in effect through April 30, 2018.

3 To recalculate the rates, it is not necessary to introduce any additional evidence into the record. In fact, it is appropriate to use only the evidence that was available at the time to recalculate rates. Avista seeks to introduce evidence of rate base from the 2016 rate year. Determining the Company's 2016 rate base levels is not before the Commission, however, and the Commission certainly is not required in this case, which was filed in February of 2015, to determine used and useful levels of 2016 rate base.

4 Avista argues that the refund amount should be reduced by the earnings it shared with customers pursuant to its decoupling mechanism, but this argument improperly mixes theory with practice. Avista collected the amount it collected. Its earnings amounted to more than its authorized return and so some of those earnings were shared with customers. It is impossible to say, however, what Avista's earnings might have been had it collected a different level of rates. Therefore it is impossible to say what the amount of earnings sharing, if any, would have been under different rates. It is not appropriate to assume that earnings would have been reduced in an exact proportion to the lower revenue requirement. Moreover, the refunds will come out of current funds and will affect current earnings and not past earnings.

5 Regarding earnings, Avista raises the red flag of unreasonable end results to distract the Commission from its simple mandate: recalculate rates without using escalated plant. The end result, however, is not even relevant in this remand phase of the proceeding. Avista compares the refunds proposed by the other parties with what Avista says its past earnings would have been under the recalculated rates and asserts this shows that the proposals of the other parties are unreasonable. The end result of any refunds will occur in the future, though, and will need to be compared to future earnings and not past earnings; so, Avista's "end

result" calculations are not useful. And even if one considers such end results, the recalculated rates that Staff presents are not unreasonable simply because Avista has produced calculations showing that these lower rates, had they ever actually been charged, would have resulted in a return that was a percentage point or so lower than the return authorized at the time.

6 Once the Commission determines the amount of the refunds to be returned to customers, it is appropriate to determine the mechanics of the refund. In general, Staff recommends that a smaller refund be returned over a short period of time and a larger refund be returned over a more extended period of time.

II. BACKGROUND

7 Avista filed a general rate case in these dockets on February 9, 2015. The Commission convened an evidentiary hearing on October 5 and 6, 2015, and the parties completed briefing on November 4, 2015. Pursuant to a partial multiparty settlement that had been submitted in the docket on May 1, 2015, Avista filed an updated power supply adjustment on October 29, 2015.[3] The update reduced the electric revenue requirement by $12.3 million.[4] No party challenged the updated power supply adjustment, and the Commission adopted the settlement.[5] On January 6, 2016, the Commission entered a final order resolving the case.[6] Pro forma power supply, reflecting the October 29, 2015, power supply update, is shown in the Commission's order as an uncontested adjustment.[7]

[3] Order 05 at 8, ¶ 12. "The agreement allowed for correction of erroneous power supply expenses caused by an enhancement of the AURORA$_{XMP}$ model that inadvertently reversed the signs so that a gain was reflected as a loss and vice versa." Order 05 at 12, ¶ 24.
[4] Order 05 at 8, ¶ 12.
[5] *See* Order 05 at 12, ¶ 23.
[6] Supra note 2.
[7] Order 05 at 99, Table B1, Electric – Uncontested Adjustments.

8 A primary contested issue in the case was Avista's proposal to use an attrition study to calculate the Company's revenue requirement. An attrition study is a complex multi-tab Excel model, incorporating a multitude of linked cells across tabs.[8] It generates a revenue requirement by applying particular escalation rates to the test year values for particular elements of the revenue requirement formula, such as operating expenses and plant (rate base).

9 On rebuttal, filed September 4, 2015, Avista adopted Staff's attrition model and methodologies,[9] which Avista presented with a few modifications in Exhibits EMA-7 and EMA-8.[10] Exhibits EMA-7 and EMA-8 are the attrition studies, for electric and natural gas respectively.

10 The Commission found "Staff's approach, as adjusted and corrected by the Company, [provides] the most appropriate methodology in this docket for supporting an attrition adjustment."[11] Accordingly, the Commission endorsed Exhibits EMA-6 and EMA-7 as the attrition revenue requirement models for this case. In Order 05, the Commission decided, however, that it was necessary to modify these attrition studies in two ways: The Commission determined that a different annual escalation rate should be applied to O&M expenses for both the electric and natural gas attrition studies, and the Commission removed all escalation of distribution plant rate base in the electric attrition study.[12] The Commission did not include the Commission's attrition model in the appendices of Order 05 or anywhere else in the docket.[13]

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[8] *E.g.*, Andrews, Exh. EMA 7 and Exh. EMA-8.
[9] Order 05 at 35, ¶ 89.
[10] McGuire, Exh. CRM-7T at 8:8-9.
[11] Order 05 at 41, ¶ 111.
[12] Order 05 at 45–52, ¶¶ 123, 136, & 139; McGuire, Exh. CRM-7T at 8:21 - 9:6.
[13] McGuire, Exh. CRM-7T at 21:10.

11 The Commission's decision was appealed. One of the issues on appeal was whether projected amounts of plant, derived from applying escalation factors to test year plant, constituted plant that was not associated with any actual plant and was therefore not "used and useful" within the meaning of RCW 80.04.250.

12 In the meantime, Avista filed another general rate case in February of 2016. The Commission made the following "Commission Determinations" in its final order on the 2016 rate filing:

> The record in this proceeding does not support a determination by the Commission that Avista's current rates are not fair, just, reasonable, or sufficient. The Commission accordingly rejects the Company's tariff filing in these dockets. Avista's rates will remain as determined in Dockets UE-150204 and UG-150205.[14]

13 In the discussion section of its decision, the Commission explained that in order to determine rates, it "must first determine the question whether the Company's existing rates 'are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered.'" "If, and only if," the Commission further explained, it "determines the answer to this threshold question is 'yes,' does the Commission have the authority, and the obligation, to determine revised rates that meet the fair, just, reasonable, and sufficient standard."[15] The Commission answered this question as "no," finding as follows:

> Avista, in this case, has failed to carry its burden to show that its existing rates "are unjust, unreasonable, [or] insufficient to yield a reasonable compensation for the service rendered." Indeed, as we discuss below, the evidence points to the opposite conclusion.[16]

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[14] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-160228 and UG-160229, Order 06, 4, ¶ 4 (Dec. 15, 2016) (Dec. 2016 GRC Order).
[15] Dec. 2016 GRC Order at 33, ¶ 60.
[16] Dec. 2016 GRC Order at 33, ¶ 61.

The Commission made the following conclusions of law:

> (4) 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. RCW 80.28.020.
>
> (5) Avista's existing rates continue to be fair, just, reasonable, and sufficient and should remain in effect prospectively from the date of this Order.[17]

Finally, the Commission ordered that "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."[18]

14 Avista filed its next general rate case in May of 2017. On April 26, 2018, the Commission entered its final order, authorizing a revenue increase for Avista for both electric and natural gas service.[19] New rates went into effect on May 1, 2018.[20]

15 In August of 2018, the Washington State Court of Appeals issued its decision on direct review of the Commission's decision in the 2015 general rate case. The Court concluded that "projections of future rate base were not "used and useful" for service in Washington . . . [and] the WUTC may not base Avista's rates on them."[21] The Court "[struck] all portions of the attrition allowance attributable to Avista's rate base" and reversed and remanded the decision for the Commission "to recalculate Avista's rates without relying on rate base that is not used and useful."[22]

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[17] Dec. 2016 GRC Order at 55, ¶¶ 111-112.
[18] Dec. 2016 GRC Order at 56, ¶ 115.
[19] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-170485 and UG-170486, Order 07 (April 26, 2018) (2017 GRC Order).
[20] McGuire, Exh. CRM-7T at 13:2-3.
[21] Court Remand Decision at 688.
[22] Court Remand Decision at 689.

16 The matter was remanded to the Commission on April 16, 2019, and the Commission entered a prehearing conference order on May 29, 2019, setting a procedural schedule for the remand proceeding. The prehearing conference order contained the as follows contained the following characterization of the proceeding and description of the Court's instructions:

> The court remanded the proceeding to the Commission to "recalculate Avista's rates without relying on rate base that is not used and useful," that is, removing the attrition adjustment applied to property that was not used and useful as of the date that the Commission entered Order 05.[23]

17 Also, in the prehearing conference order, the administrative law judge directed the parties as follows:

> Testimony filed in this proceeding must address 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.[24]

III. DISCUSSION

18 No party disputes that the recalculated rates are subject to refund, but the amount is subject to a range of recommendations. Part of the difference in the various recommendations depends on the time period over which the refunds are calculated. Further differences depend on how plant is treated and whether earnings sharing from Avista's decoupling program should apply.[25] From the Commission's order in the 2016 general rate case, it is evident that the rates subject to refund were in effect until the rates approved in Avista's 2017 general rate case went into effect. To recalculate the rates and determine the refunds, it is most principled and accurate, and best fulfills the mandate from the Court of Appeals, to recalculate the attrition allowance from the ground up, as Staff has done. The refunds that the Commission determines should not be offset by earnings sharing distributions as the amount

[23] Order 07 at 1, ¶ 2.
[24] Order 07 at 4, ¶ 11.
[25] Staff does not agree with the methodologies of the other non-Company parties but does not discuss them in this brief. These disagreements are set forth in the cross-answering testimony of Chris McGuire and Jason Ball.

of such offsets would be impossible to ascertain. And finally, Avista's notion that "end results" dictate which methodology the Commission uses to recalculate rates and determine refunds should be rejected because the end results analysis does not apply to this proceeding.

A. The Rates Subject to Refund Were in Effect Until the Rates Approved in the 2017 General Rate Case Went into Effect

19 The Commission's order in Avista's 2016 rate case did not set rates for Avista. Consequently, the rates established in Order 05 in the 2015 general rate case remained in effect until after the Commission entered its final order in the 2017 general rate case.

20 Pursuant to RCW 80.28.020, the Commission is authorized to set rates when the Commission finds that existing rates are "unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered." In the 2016 general rate case, the Commission specifically found that Avista "failed to carry its burden to show that its existing rates "are unjust, unreasonable, [or] insufficient to yield a reasonable compensation for the service rendered." Accordingly, there was no basis under RCW 80.28.020 for the Commission to set new rates. The Commission itself concluded as a matter of law, citing RCW 80.28.020, that it "has neither the authority, nor an obligation, to determine . . . rates." And the Commission stated, "Avista's rates will remain as determined in Dockets UE-150204 and UG-150205.[26]

21 Avista makes much of the Commission's finding in the 2016 general rate case that "Avista's existing rates continue to be fair, just, reasonable, and sufficient,"[27] which Avista paraphrases as "the existing rates were 'just reasonable and sufficient.'"[28] Based largely on

[26] Dec. 2016 GRC Order at 4, ¶ 4.
[27] 2017 GRC Order at 55, ¶ 112.
[28] *See* Andrews, Exh. EMA-20T at 41:3-4. Ms. Andrews cites to p. 57 of Order 06, which is the first page of Commissioner Jones's dissent. I assume the citation is to the Commission's conclusions of law on p. 55.

this statement, Avista asserts that the 2015 general rate case rate period ended,[29] despite the Commission's explanation and conclusion of law that it had neither the authority nor the obligation to set rates in the 2016 case. The Commission's conclusion that existing rates continue to be fair, just, reasonable, and sufficient is best understood as a corollary to its preceding conclusion that Avista had failed to carry its burden and the Commission therefore had neither the authority nor obligation to determine rates. It would be logically inconsistent to interpret the order as setting rates when the Commission specifically concluded that it could not determine rates.

22 Avista also argues that, because there was evidence (from other parties) in the case that Avista's rates should be decreased, and the Commission did not order a rate decrease, the Commission actually made a determination about rates.[30] A quick glance at the Dec. 2016 GRC Order, however, shows that this argument is specious. When the Commission sets rates, it discusses in its order the various elements of the rate setting formula. Nowhere in the Dec. 2016 GRC Order, however, does the Commission discuss, for example, rate base or cost of capital. Different positions on cost of capital alone typically account for significant differences in the parties' proposed revenue requirements, and when this issue is contested, as it was in the 2016 general rate case, the Commission discusses the positions of the parties in detail and comes to a decision. This is true of other elements of the revenue requirement as well. The Dec. 2016 GRC Order does not contain the comprehensive discussion necessary to a rate setting decision of the various positions of the parties on all of the elements of revenue requirement. The decision is primarily a policy guidance document for future Avista rate cases. It is clear from the structure of the order, to say nothing of the content, that the

[29] Andrews, Exh. EMA-20T at 41:1.
[30] Andrews, Exh. EMA-20T at 41:6-8, 42:3-8.

Commission did not authorize a revenue requirement for Avista in the 2016 general rate case. There is no such thing as "reaffirming"[31] rates, a term Avista invents; either the Commission sets rates or it does not. In the 2016 rate case the Commission found that there was insufficient evidence that Avista's rates needed to be re-set. And consequently, the Commission did not determine a revenue requirement for Avista in the 2016 general rate case, did not set rates, and did not introduce a new rate effective period.

23 Finally, Avista suggests that the Dec. 2016 Order stands because the other parties should have challenged the Commission's decision in the 2016 general rate case if they thought the decision in the 2015 general rate case "carried over" into the 2016 case.[32] This makes no sense, however. There was no ratemaking decision to challenge as the Commission did not make a decision on revenue requirement and rates in the Dec. 2016 GRC Order. The Commission found that Avista had presented insufficient evidence to meet its burden to show that its rates should be changed, and the Commission therefore did not make any determination about Avista's rates. The Commission's order clarified that existing rates remained in effect but, as discussed above, the Commission did not weigh the evidence on the elements in the rate making formula and determine a revenue requirement and rates. What the Commission did was to essentially dismiss Avista's request for a rate increase. The effect of the Commission's decision in the Dec. 2016 GRC Order, which also specifically rejected Avista's tariff filing, was to make the 2016 tariff filing as if it had never been. Accordingly, the rates set in Order 05 persisted approximately 2.3 years[33] until the Commission found, in the 2017 general rate case, that they were insufficient and determined new rates.

[31] *See* Andrews, Exh. EMA-20T at 42:1-2.
[32] Andrews, Exh. EMA-20T at 41:11-15.
[33] McGuire, Exh. CRM-7T at 12:15-17, 13:3-4.

B. Recalculating the Attrition Allowance from the Ground up as Staff has Done Best Fulfills the Mandate From the Court of Appeals

24 The Court of Appeals specifically struck "all portions of the attrition allowance attributable to Avista's rate base" and remanded Order 05 to the Commission to "recalculate Avista's rates without relying on rate base that is not used and useful," and this is exactly what Staff has done. Rates are calculated from a revenue requirement. The revenue requirement in this case included an attrition allowance.[34] The attrition allowance is calculated from the attrition study. To implement the Court's decision, the attrition study must be updated and the attrition allowance must be recalculated. Rates can then be recalculated based on the revised attrition allowance.

25 Staff started with the attrition studies that the Commission accepted in Order 05, Exhibits EMA-6 and EMA-7.[35] Staff then (1) input the modifications to the attrition studies that the Commission announced in Order 05; (2) entered data that had been filed after the hearing and accepted by the Commission in Order 05; and (3) incorporated the Court's decision. Specifically, Staff changed the O&M escalation rates, entered the uncontested power supply update that Avista filed October 29, 2015, and removed all rate base escalators.[36] The resulting electric and natural gas attrition studies incorporate the decision of the Court of Appeals and the decision of the Commission in Order 05.[37]

26 Finally, Staff re-calculated the attrition allowance for both electric and natural gas service.[38] Staff has also provided a revenue requirement for each service based on Appendix A in Order 05 and produced with Staff's recalculated attrition allowance.[39] It is worth noting,

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[34] Order 05 at Appendices A1-A2.
[35] McGuire, Exh. CRM-7T at 8:4-11.
[36] McGuire, Exh. CRM-7T at 10:12 – 11:13.
[37] The updated attrition studies are provided as Exh. CRM-8 and Exh. CRM-9, and Exh. CRM-10 provides a detailed description of how Staff updated Exh. EMA-6 and Exh. EMA-7 to develop Exh. CRM-8 and Exh. CRM-9.
[38] *See, e.g.*, McGuire, Exh. CRM-8 at 1, lines 12–14.
[39] Ball, Exh. JLB-8 and Exh. JLB-9.

however, that the recalculated attrition allowance accounts for the only change to the revenue requirement. Staff has calculated the refunds by identifying the difference between the attrition allowance in Order 05 (Appendix A) and Staff's recalculated attrition allowance (Mr. McGuire's Exhibits 8 and 9). Over the 2.3 years the rates were in effect, that difference is as follows:

Electric: $35,977,000

Natural gas: $7,107,000[40]

These are the amounts of the refunds that should be returned to customers.

27 Instead of using the attrition revenue requirement model to calculate an updated and accurate attrition adjustment, Avista has found a way to calculate refunds outside the model that results in significantly smaller refund amounts. With this approach, Avista calculates the refund with an almost back-of-the-envelope reckoning of how revenue requirement appears to change when rate base inputs change.[41] Because this methodology does not re-calculate the attrition allowance, it does not implement the Court's decision striking only those portions of the attrition allowance attributable to rate base.[42] Staff's analysis, in contrast, produces a rate-base-free attrition allowance, based on an updated attrition study, that fully conforms to the decision of the Court of Appeals.

28 Even if Avista's methodology adequately implemented the Court's decision (which it does not), the results should be rejected because Avista uses problematic rate base amounts to figure its refunds. Avista's basic calculation uses a number that the Company labels "Attrition Study Rate Base," which it subtracts from the Order 05 rate base levels (from

[40] McGuire, Exh. CRM-7T at 13:6-13.
[41] *See* McGuire, Exh. CRM-7T at 20:15-18; *see* Andrews, Exh. EMA-20T at 30, Table 10.
[42] McGuire, Exh. CRM-7T at 21:5-9.

Appendix A).[43] The problem is that Avista does not provide an updated attrition study, so the reliability of the "Attrition Study Rate Base" number is uncertain.[44]

29 Avista's "primary" position, which is that no refunds are due at all to customers,[45] relies on rate base levels from its 2016 general rate case filing, which is problematic. Deriving these refund amounts involves subtracting Order 05 rate base levels from Avista's presentation of rate base in its 2016 general rate case filing.[46] The Commission has discretion to exclude additional evidence on remand,[47] and in this case considering evidence from the subsequent 2016 general rate case filing is not necessary or appropriate.

30 Firstly, consistent with long-standing rate making methodology at the Commission, all of the evidence used to calculate rates should be contemporaneous. Avista, however, proposes using rate base levels from its 2016 general rate case to calculate rates in its 2015 rate case.[48] If historical accuracy is the goal (which it is not), then updated operating and maintenance expense from the 2016 rate case could also theoretically be imported into the 2015 case. Importing 2016 general rate case data is <u>not necessary</u>, however, to decide the remand proceeding. Staff presents several options for calculating refunds that do not rely on plant that was not yet in service at the time of the Commission's decision in the 2015 general rate case.[49] The Commission's prehearing conference order is relevant here, both its description of the subject of the remand—"The court remanded the proceeding to the Commission to 'recalculate Avista's rates without relying on rate base that is not used and

[43] Andrews, Exh. EMA-9T at Table 1.
[44] McGuire, Exh. CRM-7T at 20:21-22. Avista explains on rebuttal how it figures "Attrition Study Rate Base" but still does not run an attrition study. *See* Andrews Exh. EMA-20T at 18, n.27.
[45] Andrews, Exh. EMA-20T at 3:17-26.
[46] *See, e.g.,* Andrews, Exh. EMA-20T at 9-10, Tables 3-4.
[47] *See, e.g., Lloyd A. Fry Roofing Co. v. Pollution Control Bd.*, 46 Ill.App.3d 412, 361 N.E.2d 23, 27-28 (1977) ("an administrative agency is not required to open up the record and consider new evidence"), *citing National Labor Relations Board v. Donnelly Garment Co.*, 330 U.S. 219, 67 S. Ct. 756, 91 L. Ed. 854 (1947).
[48] Andrews, Exh. EMA-20T at 5:13 - 6:12.
[49] McGuire, Exh. CRM-7T at 15-16, Tables 2-5.

useful,' that is, removing the attrition adjustment applied to property that was not used and useful as of the date that the Commission entered Order 05"—and the instructions to the parties, namely "Testimony filed in this proceeding must address the portions of rates that incorporate or rely on rate base, rather than, for example, operations and maintenance expenses."[50] This language suggests that such a wholesale import of evidence on additional matters would be outside the scope of the remand proceeding.

31 Importing rate base levels available in the 2016 general rate case is also inappropriate. As discussed above, the Commission never made a revenue requirement determination in the 2016 case, let alone a determination of the level of Avista's rate base. The level of 2016 rate base is undetermined, which means that there is no set number representing an approved level of rate base to import into the 2015 case. Further, the remand is not the proper proceeding to conduct discovery on and seek a determination on evidence from the 2016 general rate case. By proposing use of rate base evidence from the 2016 case, Avista is asking the Commission to make a finding in the 2015 case on evidence from another case entirely. Finally, it is worth noting that the appellate decision does not say "this case is remanded for a recalculation of rate base." Rather, the Court Remand Decision states that the case is remanded to recalculate Avista's rates.

32 On rebuttal, Avista introduces a "compromise position" based on using the pro forma rate base from the prior case.[51] Avista makes clear, however, that this is not its primary position.[52] The compromise position, which results in some refunds to customers, is also calculated outside of any attrition model, using what appears to be the same methodology in Avista's primary position, the relationship between rate base and revenue requirement.[53]

[50] Order 07 at 1, ¶ 2, and at 4, ¶ 11.
[51] Andrews, Exh. EMA-20T at 60:13 - 61:7, including Table 23.
[52] Andrews, Exh. EMA-2T at 60:11-12.
[53] *See* Andrews, Exh. EMA-2T at 61, Table 23.

Because the same methodology is used for both the primary and "compromise" positions of Avista, the compromise position suffers the same infirmities discussed above.

33 Avista also indicates on rebuttal that, under certain conditions, it could agree to calculate the refunds using Staff's simplified attrition models in Exhibits CRM-11 and CRM-12,[54] but only with some changes including use of 2015 end-of-period (EOP) rate base.[55] Although this is an approach that Staff suggested as an alternative,[56] and although it uses data that was contemporaneous with the Commission's decision in Order 05, the approach is inferior to Staff's primary approach. The cleanest, most accurate, method of recalculating rates and determining the overall refund amounts is to run the updated attrition model in Exhibits CRM-8 and CRM-9 (without performing any operations outside the model) and recalculate the attrition allowance, as Staff did.

C. The Commission Should not Reduce Refunds Based on Earnings Sharing

34 Avista asks the Commission to offset refunds with earnings sharing from the Company's decoupling program.[57] The Commission should not, however, take into account any earnings sharing from the years 2016 to 2018 when rates from the 2015 general rate case were still in effect. Firstly, it is inherently impossible to know what earnings might have been with different rates.[58] As Staff explains, "it is not possible to know what actions, such as what investments or expenses, the Company would have incurred, or avoided, with different rates."[59] It is not just that earnings associated with rates calculated on remand are difficult to calculate accurately, but rather that the Company's theoretical earnings simply are not ascertainable. It is not fair to withhold refunds based on Avista's bare assumption that the

[54] Andrews, Exh. EMA 20T at 60:11-16.
[55] Andrews, Exh. EMA 20T at 61:9 - 62:11.
[56] McGuire, Exh. CRM-7T at 15:11 - 16:11.
[57] *E.g.*, Andrews, Exh. EMA 20T at 46:3.
[58] Ball, Exh. JLB-7T at 6:19-20, 7:4-7.
[59] Ball, Exh. JLB-7T at 7:4-6.

remand rates would have resulted in the same earnings Avista actually realized during the rate effective period.

35 Moreover, using earnings sharing as an offset to recalculated rates is further complicated by the fact that not all classes of customers are part of Avista's decoupling program.[60] Non-decoupled customers never received earnings sharing benefits, but they did pay rates that were too high. Refunds to these customers should not be reduced by earnings sharing distributed to other customers.

36 Further, the earnings sharing occurred in association with the collection of rates set in the 2015 general rate case and should not be disassociated. Real money was collected in the past, and real money was distributed back to customers under earnings sharing, in the past. Both of those actions stay in the past and are unrelated to the Court's mandate to recalculate rates. In the future, refunds will occur, and Avista's earnings will be whatever they will be, whether negative or positive. We do not yet know the future. Allowing Avista to reach back and change one of those elements—that is, earnings sharing—undermines the policy objective of earnings sharing. As Staff explains, "The purpose of the earnings sharing mechanism is to encourage the utility to find cost savings wherever feasible," so "[i]f earnings sharing can easily be 'undone' four years after the fact then the profit motive to reduce expenses could be muted."[61]

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[60] Ball, Exh. JLB-7T at 7:14-22. (Mr. Ball testifies, "In order to properly calculate the effects of earnings sharing, the Company would need to recalculate the full suite of rates in all of its tariffs, recalculate the amount decoupled and non-decoupled customers would have paid, and then reset the decoupling deferral and earnings test." "This," he explains, "is not just an incredibly complex analysis, but there is no guarantee the final number would even be correct." Exh. JLB-7T at 7:15-20.)

[61] Ball, Exh. JLB-7T at 7:8-13.

D. The "End Results" Analysis Does not Apply and Does not Justify Reducing Refunds

37 Avista argues that the recommendations of other parties should be rejected because their recalculated rates would not have allowed Avista to earn a reasonable return.[62] Avista's end results analysis is not applicable or useful, however, because these recalculated rates never were charged. Avista justifies its position by relying on the "end results" language in the *Hope* case.[63] *Hope* affirmed that whether rates are just and reasonable does not depend on the methodology used to set the rates but rather on the total effect of the rate order.[64] This is beside the point, however, because the "end results" analysis is not directly relevant to the remand proceeding.

38 In this remand proceeding the Commission is implementing the decision of the Court of Appeals. The proceeding is narrow in scope ("recalculate Avista's rates without relying on rate base that is not used and useful"), and Avista embraces the narrow scope. In fact, Avista refers multiple times to the "limited scope" of the remand proceeding,[65] asserting, "The Court simply directed the WUTC to recalculate Avista's rates without relying on rate base that is not used and useful' . . .—nothing less and nothing more."[66] The remand proceeding is not a general rate proceeding, and the Commission is not setting rates for the Company going forward. The Commission is merely recalculating rates for the purpose of determining whether a customer refund or surcharge is warranted. Because the remand proceeding is just that, a remand, limited to effectuating the decision of the Court, the "end results" analysis does not apply.

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[62] *See, e.g.,* Andrews, Exh. 20T at 29:10-13.
[63] *See* Thies, Exh. MTT-6T at 3:21-23.
[64] *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-603, 64 S. Ct. 281, 88 L. Ed. 333 (1944). The principle was re-affirmed more recently in *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989).
[65] Andrews, Exh. EMA-9T at 4:14-15, 5:17-18.
[66] Andrews, Exh. EMA-9T at 5:14-16.

39 Even if Avista's end results analysis applied, it is not clear that the situation is as dire as Avista suggests. Avista has earned less than its authorized rate of return before.[67] Dating back to 2005, Avista has filed rate cases nearly every year, and its electric returns have been below its authorized return for many of those years.[68] From 2009 through 2012, the Company's Commission-reported electric rate of return was more than 100 basis points below its authorized return.[69] Avista has weathered some underearning before and can do so again.

40 Avista's "end results" analysis, however, is not relevant to the remand proceeding because the refunds and any effect on Avista's earnings have not yet occurred. While the Commission can establish the amount of the refunds, any effect on earnings will not be on past earnings. Avista engages in an entirely fictional exercise of presenting what it claims would have been its returns under various refund proposals.[70] The Company characterizes its calculation of these returns as "end results." This is a red herring. Because the refunds will affect only future earnings and not past earnings, Avista's calculations, based on recalculated rates from the 2015 rate case, cannot accurately represent the "end results" of the Commission's decision.

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[67] *See* McGuire, Exh. CRM-8 at 17.

[68] CBR Electric Returns from Exh. CRM-8 versus Authorized Returns

CBR Return	Authorized Return
2014: 7.96	7.64 UE-120436
2013: 7.57	7.64 UE-120436
2012: 7.16	7.62 UE-110876
2011: 6.56	7.91 UE-100467
2010: 7.17	8.25 UE-090134
2009: 6.97	8.22 UE-080416
2008: 7.36	8.20 UE-070804
2007: 6.92	9.11 UE-050482
2006: 5.87	9.11 UE-050482

[69] *See id.*

[70] Thies, Exh. MTT-6T at 6:13 - 7:10.

41 Avista itself admitted at hearing that the refunds would not be booked retroactively.[71] That means that the refunds have no effect on the Company's earnings for the period for which the Commission is recalculating rates. There may be a future earnings effect of refunds (a "virtual" effect when the liability for refunds is recorded and an actual effect on year-end earnings), and there may be an effect on the Company's cash flow. The effect on Avista's actual future returns and cash flow can be mitigated by distributing the refund over time.[72] It is not necessary to sacrifice all methodological principles to the specter of the end result.

IV. CONCLUSION

42 It is the Commission's task in this remand proceeding to implement the decision of the Court of Appeals. The decision struck portions of the attrition allowance and requires the Commission to recalculate Avista's rates without relying on rate base that is not used and useful. This is exactly what Staff has done. Unlike Avista, which manages to creatively recalculate rates that result in no refunds, Staff's approach is straightforward and runs everything through the attrition model. Staff adheres exactly to the Commission's Order 05 as well as to the Court Remand Decision, and the Commission can rely on the results that Staff presents. Staff's primary recommendation results in refunds of $35,977,000 for electric customers and $7,107,000 for natural gas customers.

43 In carrying out the remand, the Commission may exercise some discretion in the methodology it employs to recalculate rates. For this reason, Staff has presented several different options to the Commission. Staff's recommendation, however, is that the Commission recalculate rates using an attrition study and apply refunds over a period of

[71] Andrews, TR. 699:11-15; Thies, TR. 741:14 - 742:9.
[72] *See* Ball, Exh. JLB-10T at 4:12-19; McGuire, Exh. CRM-7T at 3:3-14. For the refund that Staff proposes in its primary recommendation, Staff recommends that it be passed back to customers over two years.

approximately 2.3 years. The Commission did not establish new rates for Avista until the final order in the 2017 rate case. Because rates with the same legal error persisted into 2018, it would not make sense to cut off the calculation of refunds at the end of 2016.

44 The Commission should not allow Avista to offset refunds with earnings sharing from Avista's decoupling program, because the earnings that would have resulted had the recalculated rates ever been charged cannot be reliably ascertained. And finally, consideration of the end result should not deter the Commission from adopting Staff's recommendations. The end result that Avista wrings its hands over would never occur because any refunds and affected earnings will impact future operations and not the rates or earnings from the past. Accordingly the Company's end result calculations are simply not applicable and should be disregarded. While Avista may record lower earnings in the year to come, this is not a certainty and certainly is not a basis to reject the principled analysis and resulting refund amounts that Staff recommends.

Respectfully submitted,

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