Service Date: March 6, 2020

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 & UG-150205 (*Consolidated*) ORDER 11 FINAL ORDER ON REMAND

Synopsis*: The Commission construes the Court's remand direction narrowly and recalculates the rates set in Order 05 only to the extent necessary to remove the attrition allowance attributable to Avista's rate base that was not used and useful as of the date of that order. Accordingly, the Commission does not adopt parties' proposals to use attrition models or make adjustments to correct the alleged error in incorporating Avista's power supply update or to account for depreciation. The Commission also relies on the record as it existed when it entered Order 05 and does not consider evidence or events that occurred after that date when recalculating the attrition allowance, including 2016 actual rate base figures, actual rate of return during the rate period, and earnings sharing with customers.*

The Commission concludes that it can best comply with the Court's direction by adopting Public Counsel's calculations, adjusted for an approximately 11-month rate effective period. The rates the Commission set in Order 05 incorporated the impermissible attrition allowance only until December 15, 2016, when the Commission entered its final order in Avista's 2016 rate case finding those rates to be fair, just, reasonable, and sufficient without any attrition adjustment. Public Counsel's calculations otherwise correctly reflect a revised attrition adjustment that reduces the attrition revenue requirement by the amount that the Court disallowed for the escalation of rate base. The result is a refund of $4,919,000 to Avista's electric customers and $3,571,000 to its natural gas customers. The Commission does not add interest to these amounts, a liability the Commission did not establish until entering this Order, and will determine how to distribute the refunds in Dockets UE-190334 and UG-190335, Avista's 2019 general rate case.

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BACKGROUND

1 On February 9, 2015, Avista Corporation, d/b/a Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its then effective Tariffs WN U-28, Electric Service, and WN U-29, Natural Gas Service seeking to increase the rates and charges in those tariffs. The Commission suspended the filings and consolidated them for hearing. On January 6, 2016, the Commission entered Order 05, which accepted a multiparty partial settlement and resolved the remaining disputed issues in the case, including allowing for attrition adjustments to Avista's electric and natural gas rates.[1]

2 On March 18, 2016, the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) filed a petition for judicial review of Order 05. The Court of Appeals (Court) on direct review reversed that order, in part, and remanded it to the Commission to "recalculate Avista's rates without relying on rate base that is not 'used and useful,'" *i.e.*, to remove the attrition adjustment applied to property that was not used and useful as of the date the Commission entered Order 05.[2]

3 On May 29, 2019, the Commission entered Order 07, Prehearing Conference Order, establishing the scope of the proceeding on remand and the procedural schedule. The Commission subsequently amended that schedule three times at the request of the parties. Pursuant to the final schedule, the Commission conducted an evidentiary hearing on December 6, 2019, and the parties filed post-hearing briefs on January 10, 2020.

4 *Appearances*. David Meyer, Vice President and Chief Counsel, Spokane, Washington, represents Avista. Jennifer Cameron-Rulkowski, Assistant Attorney General, Lacey, Washington, represents Commission staff (Staff).[3] Nina Suetake, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Tyler C. Pepple, Davison Van Cleve PC, Portland, Oregon, represents the Alliance of Western Energy Consumers (AWEC).

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[1] Order 05, Final Order Rejecting Tariff Filing, Accepting Partial Settlement Stipulation, and Authorizing Tariff Filings (Jan. 6, 2016).

[2] *Washington Atty. Gen. Office, Public Counsel Unit v. Washington Utils. & Transp. Comm'n*, 4 Wn. App. 2d 657, 688-89 (2018).

[3] In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

TESTIMONY

5 **Avista Direct Testimony**. On June 21, 2019, Avista filed the direct testimony of Elizabeth M. Andrews, Senior Manager of Revenue Requirements in Avista's State and Federal Regulation Department.

6 *Andrews.* Andrews opines that the scope of this proceeding is limited to dealing with "attrition" rate base, not power costs or any other expenses. In addition, she contends that the affected time period is between January 11, 2016, when the rates the Commission approved in 2015 became effective, through December 15, 2016, when the Commission entered an order in Dockets UE-160228 and UG-160229 (2016 Rate Case) finding those rates were fair, just, reasonable, and sufficient based on evidence provided in that proceeding.[4]

7 Andrews recalculated Avista's rate base within these constraints. She testifies that she removed the level of attrition rate base from the Company's electric and natural gas rate base and adjusted the results to lower the 50/50 revenue sharing from over-earnings that have already been returned to customers to avoid double-counting. She then replaced the attrition projections on which the Commission relied in Order 05 with the actual level of rate base that was used and useful during 2016. Her calculation would result in an increase to the rates authorized in Order 05, which the Company does not advocate. She concludes that the Commission should not make any adjustment to those rates.[5]

8 **Staff Response Testimony**. On September 13, 2019, Staff filed the responsive testimony of Chris R. McGuire, Assistant Director of Energy Regulation in the Commission's Regulatory Services Division, and Jason L. Ball, Deputy Assistant Director in the Energy Section of the Commission's Regulatory Services Division.

9 *McGuire*. McGuire recalculated the rates the Commission authorized in Order 05 and concludes that on an annualized basis, those rates should be reduced by $15,642,000 for electric operations and $3,090,000 for natural gas, with a total refund to customers of $35,977,000 and $7,101,000 respectively. McGuire based his calculations on Avista's revised Electric and Natural Gas Attrition Models, which he modified to revise the annual escalation for operations and maintenance (O&M) expenses (and for electric distribution plant). For his electric calculations, he then incorporated Avista's Power Supply Update

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[4] Andrews, Exh. EMA-9T R at 2-11.

[5] *Id*. at 12-23.

that the Company filed in these dockets on October 29, 2015. Finally, he removed the escalation of rate base items in both models as required by the Court.[6]

10 McGuire's refund recommendation reflects his belief that the rates resulting from Order 05 were in effect from January 11, 2016, through April 30, 2018, when the Commission revised those rates in Dockets UE-170485 and UG-170486 (2017 Rate Case). McGuire characterizes the Commission order in the 2016 Avista Rate Case as rejecting the Company's proposed rate increase on the basis of insufficient evidence and leaving the existing rates in place. McGuire also does not offset his recommended refunds with customer earnings sharing (for reasons discussed in Ball's testimony), and did not use actual 2016 rate base because that information was not known as of the date the Commission entered Order 05. McGuire attributes the remaining difference between his recommendation and Avista's to the Company's use of an "Attrition Study Rate Base" when it did not produce an "Attrition Study" and Avista's failure to recalculate the attrition allowances.[7]

11 McGuire also provides alternative recalculations of the rates the Commission authorized in Order 05 outside of the Attrition Models, which result in total customer refunds for a 2.3 year period without earnings sharing offset of $6,589,500 for electric customers and $7,856,800 for natural gas customers.[8] A third alternative using 2016 actual rate base results in refunds of $2,056,200 and $975,200, respectively.[9] Staff does not recommend either of these alternative approaches.

12 *Ball*. Ball provides updates to the revenue requirement tables that the Commission created in Order 05 to reflect the revised attrition amounts McGuire calculated. He also recommends that the results of the customer earnings sharing mechanism not be used to offset any refund. He explains that the amount of any such offset cannot be determined because it is impossible to know what investments or expenses Avista would have incurred or avoided with different rates. He also opines that the purpose of the earnings sharing mechanism is to encourage the utility to find cost savings where feasible, and this policy objective would be undermined by changing the distribution of shared earnings due to recalculation of the rates four years later. Finally, any offset would need to be calculated based on all of the rates in all of the Company's tariffs and a decoupling

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[6] McGuire, Exh. CRM-7T at 7-12.

[7] *Id*. at 18-29.

[8] *Id*. at 15, Tables 2 & 3.

[9] *Id*. at 16, Tables 4 & 5.

analysis that would be excessively complex and would not necessarily result in a correct final number.[10]

13 **Public Counsel Response Testimony**. On September 13, 2019, Public Counsel filed the response testimony of Donna M. Ramas, Certified Public Accountant and Principal at Ramas Regulatory Consulting, LLC, and Glenn A. Watkins, Principal and Senior Economist of Technical Associates, Inc.

14 *Ramas*. Ramas testifies in support of Public Counsel's position that customers should be refunded the amounts resulting from the inclusion of the escalation of rate base in the attrition studies and the failure to correctly incorporate the updated power supply costs in the electric revenue requirement. Ramas disagrees with Avista's proposal to use 2016 actual rate base data because such information was not available when the Commission entered Order 05 and thus could not have been used to determine the rates the Commission approved in that order. Ramas also takes issue with the 11-month time period Avista claims the rates affected by the remand were in effect, contending that the Commission merely found Avista had failed to carry its burden of proof to increase rates in the 2016 Avista Rate Case, and thus the rates the Commission approved in Order 05 remained in effect until the Commission revised them as a result of the 2017 Avista Rate Case.[11]

15 With respect to calculating the annual revenue requirement impact resulting from the escalation of rate base, Ramas asserts that Avista unreasonably "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."[12] The Commission, she explains, applied a single attrition adjustment to the modified historical test year amounts of $28.3 million for the Company's electric operations and $6.8 million for the natural gas operations to determine the appropriate decrease in the overall operations revenue requirements.

> 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

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[10] Ball, Exh. JLB-7T.

[11] Ramas, Exh. DMR-27T at 11-14.

[12] *Id*. at 22: 6-10.

> 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.[13]

16 Ramas calculated the disallowed escalation of rate base included in the Commission's attrition adjustment in Order 05 based on the attrition rate base calculations in Andrews's testimony for Avista, finding that those calculations are consistent with the rate base amounts in Avista's and Staff's attrition models. To that base amount, Ramas applied the applicable revenue growth factor, authorized rate of return, revenue conversion factors, and authorized cost of debt from Order 05. The result is an annual disallowed escalation of $5,310,000 for Avista's electric operations and $3,855,000 for natural gas. For the entire 2.3 year period in which Ramas contends the remanded rates were in effect, Public Counsel recommends refunds of $11,996,000 to electric customers and $8,710,000 to natural gas customers.[14]

17 Ramas also advocates that the Commission should require Avista to refund amounts resulting from the Commission not incorporating the October 29, 2015, power supply update in the electric revenue requirement. Incorporating that update, she testifies, would have reduced that requirement by $12.3 million, resulting in $28,211,000 owed to electric customers. She adds that only if the Commission requires this additional refund should Avista be permitted to offset the refunds with the earnings sharing it previously provided to customers – $4,019,000 for electric customers and $3,803,000 for natural gas customers. Ramas further recommends an adjustment to account for the impact of the tax reductions in the federal Tax Cuts and Jobs Act (TCJA) effective January 1, 2018. The

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[13] *Id*. at 22:21 – 23:13.

[14] *Id*. at 15-21.

net refunds Public Counsel recommends would then be $36,189,000 for electric customers and $4,907,000 for natural gas customers.[15]

18 *Watkins*. Watkins provides recommendations concerning the method and approach the Commission should use to provide Public Counsel's recommended refunds to customers. He recommends that any overall refund the Commission orders should be given back to customers based on individual customer rate revenue during the relevant rate-effective period, including customers who have subsequently left the Avista system. Any offset for earnings sharing should be deducted on an individual customer basis. He takes no position on whether refunds are in the form of a one-time cash payment (which would be required for former customers) or a credit to existing customers' accounts.[16]

19 **AWEC Response Testimony**. On September 13, 2019, AWEC filed the response testimony of Bradley G. Mullins, an independent energy and utilities consultant representing energy consumers before state regulatory commissions.

20 *Mullins*. Mullins criticizes Avista's recalculation of rate base in the attrition adjustment for failure to account for "return of" rate base (*i.e.*, depreciation expenses) and for the Company performing its calculations outside of the attrition models. Mullins also disagrees with the 11-month time period of the rate adjustment the Company proposes and advocates a period of 2.3 years based on his interpretation of the Commission's decision in the 2016 Avista Rate Case not to change the Company's rates, at least in part based on the Commission's conclusion that it lacked authority to do so in light of Avista's failure to meet its burden of proof.[17]

21 Starting with the attrition models the Commission approved as he recreated them, Mullins made several sequential adjustments to isolate the portions of the attrition allowance attributable to rate base. These adjustments include removing the effects of both Avista's return on and return of rate base that were not used and useful when the Commission entered Order 05, modifying the model to accept Avista's October 29, 2015, power cost update, and adding interest at Avista's pre-tax cost of capital. As a result, AWEC recommends that the Commission require Avista to refund $57,809,986 to electric customers and $19,222,861 to natural gas customers.[18]

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[15] *Id*. at 23-28.

[16] Watkins, Exh. GAW-1T.

[17] Mullins, Exh. BGM-7T at 14-16.

[18] *Id*. at 13 & 34-36.

22 Mullins replaced the escalated plant balances in the attrition allowance revenue requirement model with the *pro forma* plant balances approved in the *pro forma* revenue requirement study the Commission approved in Order 05, resulting in an annual rate adjustment of $4,295,396 (or $9,873,849 over the 2.3 year period) for electric operations and $4,258,488 ($9,789,008 over the 2.3 years) for natural gas.[19] Similarly, Mullins replaced the escalated depreciation expense amounts in the attrition studies with the amounts approved in the *pro forma* study, resulting in an annual rate reduction of $3,110,331 ($7,149,734 over 2.3 years) for electric customers and $2,227,756 (or $5,120,955 over 2.3 years) for natural gas customers.[20] He also incorporated the October 2015 power cost update, which reduces the annual attrition allowance amount for electric service by $12,100,708 ($27,815,981 over the 2.3 year period).[21]

23 Finally, Mullins recommends the refunds be distributed to customers through a rate adjustment applied over a one-year period in a manner consistent with the rate spread to which the parties agreed in their Multiparty Settlement Stipulation the Commission approved and adopted in Order 05. Pursuant to that approach, the rate adjustment would be applied on an equal percentage basis to each electric rate schedule and on an equal percentage of margin to each gas rate schedule, as applicable.[22]

24 **Avista Reply Testimony**. On October 11, 2019, Avista filed the reply testimonies of Andrews, Mark Thies, Avista's Executive Vice President, Chief Financial Officer, and Treasurer, and Joseph Miller, Manager of Rates and Tariffs in Avista's Regulatory Affairs Department.

25 *Thies*. Thies testifies that Avista continues to support its original position as stated in Andrews's direct testimony, but the Company prepared an alternative or compromise position based on its review of the other parties' testimony. Under that position, Avista would refund $1.326 million to electric customers and $1.582 million to natural gas customers based on an 11-month time period, an earnings test offset, and no use of actual 2016 rate period rate base. Thies calculates that the Company's actual return on equity (ROE) in the years 2016-18 would fall far below the 9.5 percent the Commission authorized under each of the other party's proposals, a fact that the other parties ignore but that he says the Commission should not, and historically has not. Thies opines that

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[19] *Id*. at 18-24.

[20] *Id*. at 24-28.

[21] *Id*. at 28-31.

[22] *Id*. at 31-34.

rating agencies are watching this case and the current general rate case extremely closely. He is concerned that a rating downgrade would hamper the Company's ability to attract capital from both debt and equity investors under reasonable terms, which could ultimately lead to higher utility rates.[23]

26 *Andrews*. Andrews adheres to her position and supporting calculations in her direct testimony that Avista owes no refunds to customers on remand. As a compromise position if the Commission declines to consider 2016 actual rate base, she calculated that any ordered refunds should not exceed $1.326 million for electric customers and $1.582 million for natural gas customers for the applicable 11-month period. She argues that recalculation of the electric and natural gas attrition allowance or use of the flawed attrition models that Staff and AWEC propose is beyond the scope of the Court's remand requirement, as is yet another review of the alleged computational error concerning the power supply update. She reiterates that the refund period should be only from January 11, 2016, through December 15, 2016, when the Commission entered its final order in Avista's 2016 Rate Case, and that the Commission should offset any refund with the earnings sharing amounts Avista already refunded to customers in 2016. She adds that the other parties' primary positions would lower Avista's actual ROE in 2016 and 2017 to as low as 6.98 percent (with a high of 8.37 percent), 113 to 252 basis points below the 9.5 percent the Commission authorized, which is not a reasonable end result. Finally, Andrews describes an alternative that the Company would find acceptable based on Staff's attrition alternative recommendations using end of period 2015 rate base, which results in no further refunds to natural gas customers and $3.57 million refunded to electric customers for the 11-month rate effective period after offsetting earnings sharing.[24]

27 *Miller*. Miller recommends that any refund be consistent with the rate spread the Commission approved in Order 05 and passed on to customers through credits in separate electric and natural gas tariffs. He proposes that those tariffs be effective April 1, 2020, (coinciding with the change in rates resulting from Avista's current general rate case) for a one-year period, and that any over- or under-funded balance be recovered in a future general rate case filing. Miller testifies that the Company does not track the whereabouts of prior customers who have left the system and thus would have no administratively efficient way of contacting those customers to provide them with a cash refund as Public Counsel recommends. With respect to Public Counsel's proposal for existing customers,

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[23] Thies, Exh. MTT-6T R.

[24] Andrews, Exh. EMA-20T R.

Miller testifies that Avista's systems are not set up or configured to handle such a proposal and would require a substantial amount of time and resources to be able to accurately administer refunds in that manner. Miller also disagrees with Staff's recommendation that the Company file proposed tariff schedules after the Commission enters its remand order, contending that the Commission has the necessary information in the record to resolve all issues in its final order, including administration of any refunds.[25]

28 **Staff Cross-Answering Testimony**. On October 11, 2019, Staff filed cross-answering testimonies of McGuire and Ball, each of whom responds to aspects of the testimonies of Ramas and Mullins.

29 *McGuire*. McGuire testifies that the attrition allowance should be recalculated entirely because the individual components of the allowance the Commission previously authorized, including any asserted power cost error, are unknown and unidentifiable and thus cannot be disaggregated; the portion of the authorized allowance attributable to rate base (on which Avista and Public Counsel base their calculations) cannot be identified because the Commission did not identify the specific rate base it used in its attrition calculations; the Commission resolved the over-collection of taxes as a result of the TCJA in the 2017 Rate Case and thus should not account for it again; the Commission should not remove the escalation of depreciation expense from the attrition allowance calculation because the depreciation expense embedded in the authorized allowance was never dependent on, or attributable to, the escalation of rate base; and including accrued interest in the refund calculation is unnecessary because there is no liability on which to apply an interest rate until the Commission issues a decision in this case. McGuire adheres to the recommendations in his response testimony.[26]

30 *Ball*. Ball disagrees with Public Counsel's rate spread proposals and recommends that each refund be calculated based on the average use of the customer class, rather than on individual customer bills; customers should have 30 days to request a refund after the Company provides notice; and the implementation of the refund should be tied to rate changes in Avista's ongoing general rate case in Dockets UE-190334 and UG-190335 (2019 Rate Case). Ball also testifies that Public Counsel inappropriately links the calculation of a refund to the escalation of the power supply update. Finally, he contends that the Commission specifically included the power supply update in its calculation of the authorized Energy Recovery Mechanism (ERM) baseline (which he says is irrelevant

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[25] Miller, Exh. JDM-4T R.

[26] McGuire, Exh. CRM-14T.

to the consideration of the total refund), and thus the Commission should not introduce an artificial error into that calculation by incorrectly removing the October 29, 2015, power supply update as AWEC proposes.[27]

31 **Public Counsel Cross-Answering Testimony**. On October 11, 2019, Public Counsel filed cross-answering testimonies of Ramas and Watkins.

32 *Ramas*. Ramas agrees that using an attrition model to calculate the amount of refund owed to customers in this proceeding, as Staff and AWEC have done, is a reasonable approach. She observes that the result of each of the methodologies Public Counsel, Staff, and AWEC use is that Avista's electric and natural gas customers are entitled to over $40 million in refunds. She offers no opinion on whether the Commission should apply interest to the refund amount as AWEC proposes but recommends that the Commission be consistent in its application of interest across proceedings.[28]

33 *Watkins*. Watkins opines that his recommended method of distributing refunds to customers is more equitable than Mullins's proposal because it will return refunds to individual customers based on the actual excess revenue each customer contributed during the rate effective period. He concedes that if Avista lacks the appropriate records or is unable to accurately compute refunds on a customer-by-customer basis, Mullins's approach would be reasonable.[29]

DISCUSSION

Scope

34 At the outset, we must determine the scope of our obligation to comply with the Court's decision reversing Order 05, in part, and remanding it to the Commission. The Court held that Order 05 did not comply with RCW 80.04.250, which at that time authorized the Commission to "determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state." The Court stated,

> 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

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[27] Ball, Exh. JLB-10T.

[28] Ramas, Exh. DMR-38T.

[29] Watkins, Exh. GAW-4T.

> 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 expenses or other considerations. *We strike all portions of the attrition allowance attributable to Avista's rate base and reverse and remand to the WUTC to recalculate Avista's rates without relying on rate base that is not "used and useful."*[30]

The Court further clarified that RCW 80.04.250 was "'purely a *rate base* statute and does not apply to operating expenses.' To the extent that the WUTC relied on its attrition adjustment to account for increases in Avista's O&M expenses, it did not violate the statute. However, its reliance on projections to calculate Avista's rate base was improper."[31]

35 We construe the Court's remand narrowly. Rather than a general remand for further proceedings consistent with its decision, the Court expressly struck the portions of the attrition allowance attributable to rate base and remanded for the Commission "to recalculate Avista's rates without relying on rate base that is not 'used and useful.'" We are bound by the Court's holding and direction and cannot go beyond them.[32] Accordingly, we will recalculate the rates we approved in Order 05 only to the extent necessary to remove the attrition allowance attributable to Avista's rate base that was not used and useful at the time we entered that order.

36 Each of the parties calculates differently the attrition allowance to be excluded. The parties' proposals raise preliminary issues we must address prior to undertaking the calculation the Court required, as well as issues that arise once we have made that determination. We consider these issues below.

2016 Rate Base

37 Avista proposes that the Commission use the Company's actual rate base reflected in the 2016 Commission Basis Report (CBR) when calculating the Company's rates, rather than the projected attrition-adjusted rate base on which the Commission relied in Order 05. Avista asserts that such an approach not only removes the attrition allowance as the Court required but demonstrates that in reality, the Company's actual used and useful plant

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[30] *Public Counsel v. Commission*, 4 Wn. App. 2d 657, 688-89 (2018) (emphasis added).

[31] *Id.* at 687 (quoting *People's Org. for Wash. Energy Res v. Washington Utils. & Transp. Comm'n*, 104 Wn. 2d 798, 815 (1985)) (citation omitted and emphasis in original).

[32] *Bank of America, NA v. Owens*, 177 Wn. App. 181, 189, 311 P.3d 594 (2013).

during the rate period substantially exceeded the amount assumed in the attrition study. Failure to use this information, in Avista's view, would be inconsistent with current RCW 80.04.250, would deprive the Company of the opportunity to earn a reasonable rate of return resulting in an unconstitutional taking, and would be arbitrary and capricious.

38 Staff, Public Counsel, and AWEC disagree. Public Counsel, in particular, argues that the 2016 CBR data was not part of the record when the Commission entered Order 05 or when the Court reviewed the Commission's decision. Any reliance on such data now, Public Counsel contends, would constitute improper retroactive ratemaking and lead to the absurd result that Avista's 2016 rates would be *higher* after removing the stricken attrition allowance. AWEC posits that calculating new rates using 2016 CBR data would result in double counting investments the Company made in 2016 and recovered through the rates the Commission authorized in Order 05, effectively reinstituting the same attrition adjustment the Court prohibited.

39 We will not recalculate the Company's rates using 2016 CBR rate base. That data was not before us when we entered Order 05, and we will not consider it. Rather, we will rely on the evidentiary record as it existed when we entered Order 05.[33] Contrary to Avista's arguments, our compliance with the Court's decision is not unconstitutional, a violation of the very statute the Court interpreted, or arbitrary and capricious. Rather we are simply following the Court's direction.

Power Supply Cost Adjustment

40 Public Counsel contends that the electric attrition adjustment in Order 05 did not correctly incorporate the impact of Avista's October 2015 power supply update. Public Counsel proposes that the Commission correct that error on remand and reduce the Company's subsequent revenue requirement by $12.3 million in addition to removing the impermissible portion of the attrition adjustment. AWEC and Staff similarly recommend accounting for this alleged error through adjustments to their attrition models. Avista objects to the Commission's consideration of this issue, asserting that it is beyond the scope of the Court's remand direction and represents retroactive and single-issue ratemaking.

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[33] Staff offers 2015 end of period rate base as an alternative to the 2016 CBR data if the Commission determines that use of actual amounts is appropriate. We do not make that determination and therefore do not reach Staff's proposal.

41 Consistent with our interpretation of the scope of the Court's decision, we will not make any power supply update adjustment to the rates the Commission authorized in Order 05. Parties previously argued for correction of this alleged error in petitions for clarification and reconsideration of Order 05, and we rejected those arguments. Nothing in the Court's opinion or remand direction requires or allows us to re-reconsider that determination. As the Court ordered, we will recalculate Avista's rates to remove the impermissible attrition adjustment and nothing more.

42 Public Counsel nevertheless observes that the Commission on judicial review requested that the Court remand Order 05 for the limited purpose of allowing the Commission to conduct supplemental evidentiary hearings on the power supply cost adjustment. The Court, however, did not grant that request.

43 Public Counsel acknowledges this but argues that the Commission has discretion on remand, and under the public interest obligation, to correct the error. The cases on which Public Counsel relies, however, do not support that position. In the most recent of those cases, the Court stated, "While a 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 trial court cannot ignore the appellate court's specific holdings and direction on remand*."[34] Here, the Court did not remand "for further proceedings" but directed the Commission to take specific action. We do not have discretion to ignore or exceed that specific direction and thus will not do so.

Depreciation

44 AWEC interprets the Court's order as requiring removal of both return of and return on rate base that was not used and useful. With respect to return of that investment, AWEC proposes that the Commission adjust the attrition model to remove the escalation from depreciation expense, which significantly increases the amount of the refund owed to customers. Staff disagrees, stating that the Commission should not make this adjustment because the depreciation expense embedded in the authorized attrition allowance was never dependent on, or attributable to, the escalation of rate base. Avista also objects, maintaining that the Court's order was specific to attrition rate base, which does not include expenses of any kind, including depreciation expense.

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[34] *Bank of America, NA v. Owens*, 177 Wn. App. 181, 189, 311 P.3d 594 (2013) (quoting *In re Marriage of Rockwell*, 157 Wn. App. 449, 453, 238 P.3d 1184 (2010)) (citation omitted and emphasis added).

45 We agree with Staff and Avista that the depreciation expense in the attrition allowance was separate from the escalation of rate base. Depreciation, therefore, is not part of the impermissible attrition allowance we must correct on remand, and as we have determined with respect to other out-of-scope issues, we do not consider it.

Methodology for Recalculating the Attrition Allowance

46 We come, then, to the heart of this case – how to recalculate Avista's rates as the Court required to remove the attrition allowance for rate base that is not used and useful. Each party makes a different proposal. Staff and AWEC calculate refund amounts using attrition models, while Avista and Public Counsel rely on isolated rate base-only calculations derived from Avista's attrition study. We address these methodologies in turn.

Attrition Models

47 Staff recalculates the attrition allowance "from the ground up," making various adjustments to Avista's revised Electric and Natural Gas Attrition Models. AWEC's calculations are based on a similar approach. Both of these parties contend that this methodology, in contrast to Avista's calculations, properly removes the attrition allowance for rate base that was not used and useful in compliance with the Court's order. Public Counsel made its calculations outside of the attrition models but opines that the approach Staff and AWEC have taken is reasonable. Avista disagrees, contending that Staff's and AWEC's model revisions have multiple flaws and are inconsistent with the Court's order.

48 Our objective is to remove the attrition allowance for rate base that was not used and useful, and *only* that impermissible allowance. The models Staff and AWEC use do more than that. Not only do Staff and AWEC make specific adjustments outside the bounds of the Court's order as discussed above, but Avista identifies flaws in their modeling technique.[35] We agree with Avista that the attrition models Staff and AWEC propose "unduly complicate and confuse what should be a straight forward exercise,"[36] as well as exceed the Court's mandate. Accordingly, we will not recalculate the rates the Commission authorized in Order 05 by using these attrition models.

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[35] Andrews, Exh. EMA-20T R at 32:10 – 33:17 (discussing "issues of mixing attrition study mechanics with pro forma study mechanics").

[36] *Id*. at 36:2-3.

Isolated Rate Base Only Calculations

49 Neither Public Counsel nor Avista calculate their proposals using an attrition model. Public Counsel witness Ramas begins her calculations with Avista's escalation of rate base study figures in Exh. EMA-15 of $52.53 million for the Company's electric operations and $38.09 million for natural gas. She applies the revenue growth factors the Commission authorized in Order 05 and calculates the amount of revenue requirement related to the escalation of rate base for each operation.[37] Avista proposes similar calculations but begins with much lower escalation of rate base study figures.[38] Avista witness Andrews testified that "Public Counsel . . . , by considering only the escalated attrition rate base amount, ignores altogether the pro forma rate base approved by the Commission in Order 05, thus overstating the attrition rate base to remove, and thereby overstating their proposed refund."[39]

50 We find that Public Counsel's calculations best reflect the amount of attrition allowance attributable to rate base that was not used and useful and must be removed from Avista's rates.[40] Ramas determined her attrition adjustment based on a revenue requirement from the modified historical test year with known and measurable *pro forma* adjustments, effectively removing the attrition allowance for the remaining rate base that was not used and useful. That modified historical test year includes the *pro forma* adjustments the Commission previously approved and which were known and measurable prior to our entry of Order 05. By reducing the escalated rate base by the amount attributable to the *pro forma* adjustments, Avista double counts those adjustments, artificially deflating the attrition rate base that must be removed.[41] We thus find Public Counsel's calculations to be more accurate.

51 Staff and AWEC contend that extracting only rate base that is not used and useful from the attrition allowance is not possible because the individual components of the allowance the Commission previously authorized are unknown and unidentifiable and

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[37] Ramas, Exhs. DMR-27T at 18 & 20, DMR-28 & DMR-29.

[38] Avista's calculations supporting its primary position use 2016 CBR data for rate base, which we have rejected, but Avista also calculates refund amounts based on its attrition study rate base in order to address other parties' positions. For purposes of this discussion, we refer to the latter calculations.

[39] Andrews, Exh. EMA-20T R at 32:2-5.

[40] As discussed below, we modify these calculations to apply to an 11-month rate effective period and to remove Public Counsel's proposed power cost update adjustment.

[41] Ramas, Exh. DMR-27T at 21:10 – 23:13.

thus cannot be disaggregated. We are not persuaded by this argument. Order 05 did not disaggregate rate base, but Avista's attrition study on which the Commission relied does separately account for rate base that was not used and useful. Indeed, Andrews demonstrates that, with the addition of the Commission-approved annual growth rate percentage for net plant, the total attrition-escalated rate base amount in Staff's model matches Avista's calculations.[42] Both Avista and Public Counsel rely on Avista's figures to make their respective calculations, and we find that reliance reasonable, particularly given the alternative of recalculating rates from scratch.

52 Except as we discuss below, therefore, we order Avista to provide refunds to customers in compliance with the Court's direction using Public Counsel's proposed methodology and calculations.

Rate Recalculation Time Period

53 Having determined the appropriate methodology for recalculating the rates in Order 05 as the Court required, we now address issues the parties have raised concerning how to apply, and whether to adjust, those calculations. The first such issue is the length of the rate recalculation period. The Court dictated what the Commission must do to comply with the statute but did not specify the applicable time period. We construe the Court's decision as requiring a recalculation only of those rates that incorporate the impermissible attrition allowance.

54 Avista contends that those rates were only in effect for 11 months – from January 11, 2016, the effective date of the rates set in Order 05, until December 15, 2016, when the Commission entered its order in the 2016 Rate Case. The Company claims that even though the Commission concluded that Avista had not carried its burden in the 2016 Rate Case to prove a need for a rate increase, the Commission found that the existing rates were fair, just, reasonable, and sufficient based on the record presented in that case, rather than in reliance on Order 05 and the attrition allowance the Court overturned.

55 Staff, Public Counsel, and AWEC construe the final order in the 2016 Rate Case differently. They argue that by not changing the rates in that case, the Order 05 rates remained in effect, essentially as if the 2016 Rate Case never happened. These parties rely, in part, on RCW 80.28.020, which authorizes the Commission to set rates only after finding that existing rates are not fair, just, reasonable, and sufficient. The Commission concluded that Avista had not carried that burden of proof, and thus the Commission

[42] Andrews, Exh. EMA-20T R at 35:7-17.

lacked authority to set any new rates. Accordingly, these parties assert, the rates authorized in Order 05 continued in effect, unchanged until the Commission established new rates in 2018 as a result of the final order in the 2017 Rate Case.

56 Those parties fail to distinguish between the calculations on which the Commission established the rates in Order 05 and the rates themselves. The Court required the Commission only to correct the former. Accordingly, our inquiry is limited to the time period in which rates were based on the inclusion of rate base that was not used and useful. That period ended with our final order in the 2016 Rate Case.

57 Avista filed its direct testimony and exhibits in support of its 2016 Rate Case on February 19, 2016, six weeks after the Commission entered Order 05. We found that "insofar as its revenue requirements case is concerned, Avista's case begins and ends with its attrition study."[43] "Because an attrition study is an additional tool to use in conjunction with a modified historical test year, the appropriate methodology begins with development of a modified historical test year with *pro forma* plant additions."[44] The Commission adds an attrition adjustment only in rare circumstances where the attrition study shows a significant mismatch between earnings and expenditures in the modified historical test year.[45]

58 Avista failed to use the required methodology in preparing its attrition study in the 2016 Rate Case. All parties, however, developed *pro forma* revenue requirements based on their separate analyses of the modified historical test year. Avista correctly observes that "all parties in that docket began with a pro formed level of electric rate base for 2016 that exceeded even the attrition level of rate base at issue in the previous case on appeal (i.e., this case)."[46] The Commission found that the results of the parties' analyses

> showing the Company's revenue requirements for 2017 and the first half of 2018 do not in themselves demonstrate that Avista is experiencing attrition. . . . The parties' respective results, all taken at face value and considered together, show that finding a revenue sufficiency for electric operations would be at least equally likely as finding a revenue deficiency. The results of all parties' analyses in the case of gas operations are

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[43] 2016 Rate Case, Order 06, Final Order Rejecting Tariff Filing ¶ 62.

[44] Order 05 ¶ 111.

[45] *Id*.

[46] Andrews, Exh. EMA-20T R at 43:1-3 (emphasis in original).

> definitive; a revenue sufficiency is indicated in each party's *pro forma* analysis.[47]

We found that the Company's additional evidence failed to prove otherwise:

> In sum, for the reasons discussed, the 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. We also find the evidence does not show that the revenues produced by Avista's approved rates are not sufficient to allow the Company to continue to provide safe and reliable electric and natural gas services to customers.[48]

59 The Commission in the 2016 Rate Case concluded not just that Avista failed to prove a need to increase its rates but that the Company did not demonstrate that it was suffering from attrition. In other words, there was no mismatch between earnings and expenditures in the modified historical test year submitted in that case, and Avista's rates in effect at that time were sufficient to provide the Company with a reasonable opportunity to earn its authorized rate of return without an attrition adjustment. The rate levels the Commission set in Order 05 remained the same, but the Commission relied on the evidence in the 2016 Rate Case and upon different grounds to determine that those rates were fair, just, reasonable, and sufficient. The rates no longer were dependent upon, or justified by, an attrition adjustment.

60 The Commission thus accomplished in the 2016 Rate Case what the Court required in its order – the Commission effectively removed the attrition adjustment underlying the rates set in Order 05 for all rate base, not just the rate base that was not used and useful. The Commission did not need to set new rates to achieve this result, and thus RCW 80.28.020 is inapplicable. The Commission required the rates to remain in effect based on the record in the 2016 Rate Case, rather than the record in these dockets, thereby altering the basis on which the Commission found those rates to be fair, just, reasonable, and sufficient.

61 We recognize that this result is essentially the same that Avista advocates for the entire time period in which the Order 05 rates were in effect. The difference is that our determination in the 2016 Rate Case was based on the evidentiary record in that

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[47] 2016 Rate Case, Order 06 ¶ 65.

[48] *Id*. ¶ 74.

proceeding. Avista asks us to consider evidence that was not before us when we entered Order 05. We decline to do so. We are bound in each case by the record in that proceeding, as well as by the Court's order.

62 We conclude that the rates based on the impermissible inclusion of an attrition adjustment for rate base that was not used and useful were in effect only from January 11, 2015, through December 15, 2016, when the Commission entered its final order in the 2016 Rate Case. Accordingly, we modify Public Counsel's calculations of the required refund in Exhs. DMR-28 (electric) and DMR-29 (natural gas) to apply only to that 11-month period. Appendix A (electric) and Appendix B (natural gas) to this Order reflect the modified calculations.[49] We order Avista to refund $4,919,000 to its electric customers and $3,571,000 to its natural gas customers consistent with those calculations.[50]

Offset for Earnings Sharing

63 Avista refunded to customers a portion of its earnings in excess of its authorized rate of return in 2016 as part of a Commission-authorized sharing plan. Avista argues that any refund the Commission requires on remand should be reduced by these amounts to avoid "double counting" of revenues owed to customers, unconstitutional confiscation of Company earnings, and an unreasonable end result.

64 Staff disagrees and claims that it is impossible to know what the Company's earnings would have been had different rates been in effect during the applicable rate period; customers who benefited from earnings sharing would be disadvantaged if they were not affected by the impermissible attrition adjustment; and allowing Avista to take back earnings it has already shared with customers would undermine the purpose of providing the Company with an incentive to save costs wherever possible. Public Counsel contends that no earnings offset is appropriate unless the Commission's calculations of the refund on remand include a correction for the power supply cost update, which Public Counsel claims benefited Avista's shareholders at its customers' expense.

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[49] Because the TCJA did not become effective until after the 11-month rate effective period, Public Counsel's proposed adjustment for the tax changes in that federal statute are inapplicable and are not included in our final calculations.

[50] We note that in its "compromise position," Avista calculates the refund amount for natural gas operations during this period (using its attrition study rate base and before applying an offset for shared earnings) as $3,163,000, only slightly less than the amount Public Counsel calculated, although Avista's calculation of the refund for electric operations of $2,653,000 is significantly less. Andrews, Exh. EMA-20T R at 61, Table 23.

65 The Court ordered the Commission to recalculate Avista's rates without relying on rate base that is not used and useful. The Court said nothing about permitting Avista to reclaim earnings sharing, and indeed, Avista has repeatedly argued that the scope of this proceeding is limited to the Court's direction on attrition rate base. The Company may not depart from that position when it is advantageous to do so.

66 The earnings sharing occurred long after the Commission entered Order 05. As we stated when rejecting the use of 2016 CBR data, we confine ourselves to the evidence as it existed at the time the Commission entered that order. Staff, moreover, correctly notes that no one can know what the Company would have done to reduce its costs if the rates as recalculated in this Order had been in effect during the applicable rate period, and we will not engage in such speculation. Rather, we will adhere to our interpretation of the Court's order and take only the actions the Court required. Accordingly, we do not reduce the refunds we calculate in this order by the amount of shared earnings Avista previously provided to customers.

Impact on Return on Equity

67 Avista contends that the Commission retains its statutory obligation on remand to ensure a reasonable end result, specifically by setting fair, just, reasonable, and sufficient rates that allow the Company to earn its authorized rate of return. According to the Company, the other parties' primary positions would lower Avista's actual ROE in 2016 and 2017 to between 6.98 and 8.37 percent, 113 to 252 basis points below the 9.5 percent the Commission authorized in Order 05. To Avista, this is not a reasonable end result.

68 The other parties counter that an end result analysis is beyond the scope of the Court's mandate and inapplicable to remand proceedings. Staff further observes that the effect of any refund will be on Avista's future earnings, not its earnings during the rate period. Even were that not the case, according to Staff, Avista's actual earnings in prior years have often been less than the authorized ROE, as well as lower than the ROE the Company calculates would be the result of the refunds proposed by the other parties.

69 We will not engage in an end result analysis. The Court's decision was very specific and leaves us no discretion to do anything other than recalculate rates to remove the attrition adjustment for rate base that was not used and useful. That is not a zero sum exercise.[51]

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[51] Avista cites the Commission's decision in *Washington Utils. & Transp. Comm'n v. Washington Water Power*, Cause U-81-15, Fourth Supp. Order on Remand (Jan. 1985), in support of its contention that the Commission conducts an end result analysis on remand. In that order, the Commission declined to alter the rates it had previously established – despite being ordered by

Nor could we recalculate rates under an end result analysis in this docket without re-litigating the entire case. Conducting such a proceeding would not be the best use of party and Commission resources and would vastly exceed the scope of the action the Court required on remand. We have complied with the Court's direction, and the results are what they are.

Interest

70 AWEC proposes that the Commission calculate and add accrued interest to the refund calculation consistent with RCW 80.04.230, which, AWEC argues, allows the Commission to order a utility to pay the amount of an overcharge with interest from the date of collection of that overcharge. Avista and Staff disagree with AWEC's argument on the basis that there is no liability on which to apply an interest rate until the Commission issues a decision in this case. Public Counsel recommends that the Commission include interest only to the extent that is consistent with Commission practice.

71 The Court did not include interest in its direction to recalculate rates and thus AWEC's proposal is beyond the scope of this proceeding. We also agree with Avista and Staff that Avista's liability for a refund did not arise until we determined the existence and amount of the refund in this Order, and thus assessing interest prior to that date would be inappropriate. RCW 80.04.230 is specific to complaints for overcharges, which is not the genesis of this proceeding, and in any event leaves the payment of interest, and of the overcharge itself, to the Commission's discretion. We do not include interest on the refund we require in this Order.

Refund Distribution

72 Avista recommends that any refund be consistent with the rate spread the Commission approved in Order 05 and passed on solely to existing customers through credits in separate electric and natural gas tariffs. Public Counsel proposes that any refund should

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the Court to remove construction work in progress the Court held to be impermissibly included in rate base – because of the Commission's statutory obligation to set rates that are fair, just, reasonable, and sufficient. The Court has subsequently made clear that trial courts – and by necessary implication administrative agencies conducting quasi-judicial proceedings subject to the courts' jurisdiction – "cannot ignore the appellate court's specific holdings and direction on remand." *Bank of America, NA v. Owens*, 177 Wn. App. 181, 189, 311 P.3d 594 (2013). To the extent that the Commission's prior decision conflicts with this requirement, we conclude that that earlier order is no longer valid precedent and that a court's specific holdings and direction on remand prevail over our interpretation of our governing statutes.

be given back to both existing and former customers based on individual customer rate revenue during the relevant rate-effective period. AWEC recommends that refunds be distributed to current customers through a rate adjustment applied over a one-year period in a manner consistent with the rate spread the Commission approved in Order 05. Rather than make a specific proposal now, Staff initially suggested that the Company file proposed tariff schedules after the Commission enters its remand order but subsequently recommended that any refunds be coordinated with rate changes in the 2019 Rate Case.

73 We will not determine how to distribute the refunds in this proceeding. The Commission will be entering its final order in the 2019 Rate Case by March 31, 2020, and we will determine how the Company must distribute the refund in that proceeding. In light of the timing of this Order, incorporating the refunds into any changes the Commission makes to Avista's rates in the 2019 Rate Case is more administratively efficient and would reduce the likelihood of customer confusion.

74 We nevertheless address two issues associated with the distribution of the refunds. First, we agree with the parties that the distribution should be consistent with the rate spread the Commission approved in Order 05. The rates were set on that basis and the refunds should be distributed in the same manner. Second, we will not extend the distribution of the refunds to former customers. Avista witness Miller's undisputed testimony is that the Company does not track the whereabouts of prior customers who have left the system and thus would have no administratively efficient way of contacting those customers to provide them with a cash refund. The burden of attempting to locate and provide refunds to these customers thus outweighs the benefit, and we will not require Avista to do so.

FINDINGS OF FACT

75 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric and natural gas companies.

76 (2) Avista is a public service company regulated by the Commission, providing service as an electric and natural gas company.

77 (3) The Court on direct review of Order 05 reversed that order, in part, and remanded it to the Commission to "recalculate Avista's rates without relying on rate base that is not 'used and useful.'"

78 (4) The 2016 CBR rate base data was not before the Commission when it entered Order 05.

79 (5) The depreciation expense embedded in the authorized attrition allowance was never dependent on, or attributable to, the escalation of rate base.

80 (6) The attrition models that Staff and AWEC use to recalculate Avista's rates make adjustments above and beyond removal of the attrition allowance the Court required for rate base that was not used and useful.

81 (7) By reducing the escalated rate base by the amount attributable to the *pro forma* adjustments, Avista double counts those adjustments, artificially deflating the attrition rate base that must be removed.

82 (8) Public Counsel's calculations, adjusted for an 11-month rate effective period, accurately remove rate base that was not used and useful from the attrition adjustment the Commission approved in Order 05.

83 (9) The final order in the 2016 Rate Case concluded, based on the record before the Commission, that the existing rates were fair, just, reasonable, and sufficient without an attrition adjustment and effectively removed the attrition allowance underlying the rates set in Order 05 for all rate base, not just the rate base that was not used and useful, as of December 15, 2016.

84 (10) Avista shared 2016 over-earnings with customers long after the Commission entered Order 05.

85 (11) Avista's actual earnings and rate of return in 2016 were not part of the evidentiary record when the Commission entered Order 05.

86 (12) The Commission may set new rates for Avista in the 2019 Rate Case, and incorporating the refunds required in this Order into any changes ordered in the 2019 Rate Case would be more efficient and would minimize customer confusion.

87 (13) The Commission set the rates in Order 05 based on the rate spread the Commission approved in that Order, and the refunds should be distributed consistent with that rate spread.

88 (14) Avista does not track the whereabouts of prior customers who have left the system and thus would have no administratively efficient way of contacting those customers to provide them with a cash refund.

89 (15) The burden of attempting to locate and provide refunds to Avista's prior customers outweighs the benefit.

CONCLUSIONS OF LAW

90 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

91 (2) The Commission construes the Court's remand narrowly and recalculates the rates set in Order 05 only to the extent necessary to remove the attrition allowance attributable to Avista's rate base that was not used and useful at the time the Commission entered that order.

92 (3) The Commission relies on the record as it existed when we entered Order 05 and does not consider evidence or events that occurred after that date when calculating the attrition allowance for rate base that was not used and useful.

93 (4) Any power supply update adjustment to the rates the Commission authorized in Order 05 is beyond the scope of the Court's direction and this proceeding on remand.

94 (5) Depreciation is beyond the scope of the Court's direction and this proceeding on remand.

95 (6) The Commission can best comply with the Court's direction by adopting Public Counsel's calculations, adjusted for an 11-month rate effective period as shown in Appendices A and B.

96 (7) The rates subject to the recalculation the Court required were in effect from January 11, 2016, the date the rates the Commission set in Order 05 became effective, though December 15, 2016, the date the Commission entered its final order in the 2016 Rate Case.

97 (8) 2016 earnings sharing with customers is beyond the scope of the Court's direction and this proceeding on remand.

98 (9) Avista's actual earnings and rate of return in 2016 are beyond the scope of the Court's direction and this proceeding on remand.

99 (10) Avista had no liability for a refund on which to apply an interest rate until the Commission issued a decision in this case, and interest is beyond the scope of the Court's direction and this proceeding on remand.

100 (11) The Commission should determine how to distribute the refund we require in this Order in conjunction with any rate changes the Commission adopts in the 2019 Rate Case.

ORDER

101 THE COMMISSION ORDERS:

102 (1) Avista Corporation, d/b/a Avista Utilities must refund $4,919,000 to its electric customers and $3,571,000 to its natural gas customers, as reflected in Appendices A and B.

103 (2) The Commission will determine how Avista Corporation, d/b/a Avista Utilities must distribute the required refunds in Dockets UE-190334 and UG-190335.

104 (3) The Commission delegates to the Secretary the authority to approve submissions in compliance with this Order.

105 (4) The Commission retains jurisdiction to enforce the terms of this Order.

Dated at Lacey, Washington, and effective March 6, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.