

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a
AVISTA UTILITIES,

Respondent.

DOCKETS UE-190334, UG-190335, and
UE-190222 (*Consolidated*)

POST-HEARING BRIEF OF PUBLIC COUNSEL

February 5, 2020

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. THE COMMISSION SHOULD REJECT THE NATURAL GAS REVENUE REQUIREMENT PROPOSED IN THE PARTIAL STIPULATION..... 2

III. THE COMMISSION SHOULD MODIFY AVISTA’S DECOUPLING MECHANISM TO ACCOUNT FOR REVENUE DIRECTLY ATTRIBUTABLE TO ENERGY EFFICIENCY AND CONSERVATION MEASURES. 5

IV. ENERGY RECOVERY MECHANISM..... 7

 A. The Commission Should Continue to Support the Workgroup Process Related to Avista’s ERM and Should Reaffirm Its Finding of Directional Bias in Avista’s Modeling..... 8

 B. The Commission Should Require Avista to Complete the Workgroup Process and Correct Identified Errors and Biases Affecting Its Net Power Cost Calculations No Later than Avista’s Next General Rate Case. 10

V. CONCLUSION 11

TABLE OF AUTHORITIES

Regulations

WAC 480-07-750(2).....	2
------------------------	---

UTC Decisions

<i>In the Matter of the Wash. Utils. & Transp. Comm’n’s Investigation into Energy Conservation Incentives,</i> Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets (Nov. 4, 2010) (“Decoupling Policy Statement”).....	5, 6
<i>Wash. Utils. & Transp. Comm’n v. Avista Corp.,</i> Dockets UE-170485 and UG-170486, Order 07, Final Order (Apr. 26, 2018) (“Avista 2017 GRC Order”).....	8, 9, 10
<i>Wash. Utils. & Transp. Comm’n v. Northwest Natural Gas,</i> Docket UG-181053, Order 06 (Oct. 21, 2019) (“NW Natural GRC Order”).....	5, 6

I. INTRODUCTION

1. On November 21, 2019, Avista Utilities (“Avista”) filed a Partial Multiparty Settlement Stipulation (“Stipulation”) that was joined by the Staff of the Washington Utilities and Transportation Commission (“Staff”), the Public Counsel Unit of the Washington Office of the Attorney General (“Public Counsel”), the Alliance for Western Energy Consumers (“AWEC”), the NW Energy Coalition, The Energy Project, and the Sierra Club.¹ The Stipulation resolved all issues in this proceeding with the exception of (1) the Company’s decoupling proposal, which is not subject to any agreement among the parties; (2) the natural gas revenue requirement of \$8.0 million included in the Stipulation, which Public Counsel does not support; and (3) the remaining Energy Recovery Mechanism (“ERM”) issues in Docket UE-190222 that are not otherwise addressed in the investigation being conducted in Docket UE-190882.

2. In accordance with the directive of Administrative Law Judge Andrew O’Connell,² Public Counsel submits this brief regarding the remaining contested issues. Public Counsel does not support the \$8.0 million increase to natural gas revenue requirement included in the Stipulation and respectfully requests that the Commission modify this term to an increase of no more than \$5.08 million. Public Counsel also opposes Avista’s decoupling mechanism as filed and amended by Avista’s rebuttal testimony and recommends that the Commission modify the mechanism to account for revenue directly attributable to Avista’s energy efficiency and conservation measures. Public Counsel also recommends the Commission continue to support the workgroup process related to Avista’s ERM and reaffirm its finding of directional bias in

¹ Partial Multiparty Settlement Stipulation (Nov. 21, 2019) (“Stipulation”).

² O’Connell, TR. 250:9–251:9.

Avista's modeling. Finally, Public Counsel recommends the Commission require Avista to complete the workgroup process and correct identified errors and biases affecting its net power cost calculations no later than Avista's next general rate case.

II. THE COMMISSION SHOULD REJECT THE NATURAL GAS REVENUE REQUIREMENT PROPOSED IN THE PARTIAL STIPULATION.

3. Public Counsel opposes the \$8.0 million revenue increase for natural gas service included in the Stipulation. The proposed natural gas revenue requirement will be an 8.5 percent revenue increase for customers. Simply put, this is too high of a rate increase for customers who have experienced revenue increases every year from 2009 to 2016 at an average annual increase of 3.02 percent.³ Although Avista's natural gas rates remained unchanged from 2016 to 2018, the benefits enjoyed by ratepayers over the past two years will be virtually wiped out by the proposed \$8.0 million increase.⁴ Public Counsel, therefore, continues to support the adjustments to Avista's natural gas revenue requirement proposed in the testimony of Andrea Crane that result in an increase of no greater than \$5.08 million, based on the cost of capital agreed to in the Stipulation.⁵
4. The revenue reflected in the Stipulation is the result of a "blackbox" settlement, so it is not possible to determine the specific components of the agreement.⁶ The underlying rationale for authorizing any revenue increases, however, should be based upon the evidence in Avista's testimony, and that showing does not support such a large revenue increase.⁷ For example, many

³ Testimony of Andrea C. Crane in Opposition to the Natural Gas Partial Stipulation, Exh. ACC-14T, 5:1-3.

⁴ *Id.* at 5:4-6.

⁵ *Id.* at 5:6-14.

⁶ *Id.* at 5:7-9.

⁷ See WAC 480-07-750(2). The Commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.

of the adjustments proposed in Avista’s initial filing were not based on known and measurable changes to the test year but, instead, inappropriately extended the test year.⁸ Ms. Crane, therefore, recommended removing all post-test year capital additions⁹ and speculative post-test year expenses for wages, medical insurance, information technology, and property tax.¹⁰

5. Avista also requested significant increases for incentive compensation expenses that should not be paid by ratepayers.¹¹ For executive officers, Avista did not include costs for its Long Term Incentive Compensation Plan because the awards are based on financial parameters and metrics related to earnings per share and total shareholder return that do not necessarily benefit ratepayers.¹² Avista, however, did include the costs for its Short Term Incentive Plan. Ratepayers should not be required to pay for significant incentive compensation bonuses on top of already generous salaries to executive officers.¹³ This is particularly true given the fact utilities compare their executive compensation packages against that of other utilities, which results in spiraling executive compensation costs.¹⁴ Ms. Crane, therefore, adjusted Incentive Compensation expenses to remove 100 percent of executive officer incentive compensation.¹⁵

6. For non-executive incentive compensation, Ms. Crane removed 50 percent of non-executive incentive compensation related to financial criteria that directly benefit shareholders rather than ratepayers.¹⁶ As mentioned above, Avista does not include similar

⁸ *Id.* 5:10–12.

⁹ Response Testimony of Andrea C. Crane, Exh. ACC-1T, 27:14–32:2.

¹⁰ *Id.* at 21:9–13, 24:15–25:5, 26:10–16, and 27:2–13.

¹¹ *Id.* at 15:2–16:4.

¹² *Id.*

¹³ *Id.* at 16:5–20.

¹⁴ *Id.* at 17:1–18:16.

¹⁵ *Id.* at 19:7–15.

¹⁶ *Id.* at 18:17–19:6.

compensation related to financial metrics for executive compensation. The same rationale should apply to non-executive incentive compensation.

7. Other notable costs in Avista’s original request that should be reduced or disallowed are injuries and damages expenses that were improperly calculated using an average that included outlier data,¹⁷ and non-executive salary and wage expenses that inappropriately included costs related to the Hydro One merger.¹⁸

8. In total, Public Counsel’s witness recommended a reduction of \$7.85 million to Avista’s natural gas revenue requirement, using the cost of capital included in the Stipulation.¹⁹ The recommended adjustments are summarized in the table, below.

Table 1: Summary of Recommended Gas Adjustments (\$000)²⁰

	Recommendation	Company	Difference
1 Deferred FIT Rate Base (1.01)*	(\$110)	(\$115)	\$5
2 Remove AMI Rate Base (1.04)*	(532)	(558)	26
3 Injuries and Damages Expense (2.05)	3	56	(53)
4 Restate Incentives Expense (2.13)	(735)	(75)	(660)
5 Restate Debt Interest (2.14)*	252	330	(78)
6 Restate 2018 AMA Rate Base to EOP (2.15)*	4,487	4,627	(140)
7 Labor - Non Executive Expense (3.03)	525	764	(239)
8 Labor- Executive Expense (3.04)	28	107	(79)
9 Employee Benefits Expense (3.05)	338	837	(499)
10 Insurance Expense (3.06)	(45)	12	(57)
11 IS/IT Expense (3.07)	252	609	(357)
12 Property Tax Expense (3.08)	222	498	(276)
13 Capital Additions (3.10)	0	4,031	(4,031)
14 Capital Addition Offsets (3.11)	0	(15)	15
15 Results of Operation*	694	2,126	(1,432)
16 Total Adjustments	\$5,379	\$13,234	(\$7,855)
17 Company Claim			12,935
18 Recommendation			<u>\$5,080</u>

* Difference due to different costs of equity and capital structure in original Company filing.

¹⁷ *Id.* at 13:5–14:1.

¹⁸ *Id.* at 21:14–22:2.

¹⁹ Crane, Exh. ACC-8r.

²⁰ *Id.*

9. As a result, Public Counsel recommends a natural gas revenue requirement increase of no greater than \$5.08 million. While an additional \$5.08 million in gas revenue requirement will still result in a substantial 5.4 percent increase to base gas rates,²¹ it will be more in line with the 5.7 percent base electric rate increase reflected in the Stipulation.²²

III. THE COMMISSION SHOULD MODIFY AVISTA’S DECOUPLING MECHANISM TO ACCOUNT FOR REVENUE DIRECTLY ATTRIBUTABLE TO ENERGY EFFICIENCY AND CONSERVATION MEASURES.

10. Decoupling mechanisms are intended to remove barriers to utilities acquiring and encouraging all cost-effective conservation.²³ As explained by the Commission in its recent order in the 2018 Northwest Natural Gas (“NW Natural”) rate case, “In nearly 30 years of cases and orders addressing decoupling, the Commission has consistently focused on the goal of encouraging energy efficiency.”²⁴ The Commission further clarified that decoupling is not intended as an attrition tool or to fully compensate a utility between rate cases but is intended as a means of addressing usage variations primarily due to energy conservation efforts.²⁵

11. The current mechanism, however, is far broader than simply compensating the utility for sales lost to energy efficiency programs. For Avista, weather variations are a major factor in revenue fluctuations for which the Company is compensated through the decoupling mechanism.²⁶ This is particularly true for natural gas residential customers, where weather was

²¹ Crane, Exh. ACC-14T at 6:8–9.

²² Joint Testimony in Support of the Partial Multiparty Settlement Stipulation, Exh. JT-1 at 2:19–21.

²³ *In the Matter of the Wash. Utils. & Transp. Comm’n’s Investigation into Energy Conservation Incentives*, Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets, ¶ 12 (Nov. 4, 2010) (“Decoupling Policy Statement”).

²⁴ *Wash. Utils. & Transp. Comm’n v. Northwest Natural Gas*, Docket UG-181053, Order 06, ¶ 29 (Oct. 21, 2019) (“NW Natural GRC Order”).

²⁵ *Id.* ¶ 39.

²⁶ Patrick D. Ehrbar, Exh. PDE-2 at 4-4 and 4-7.

found to be “clearly the predominant factor in understanding changes in residential therm use per customer.”²⁷

12. While weather variations are acknowledged by the Commission to be captured by full decoupling mechanisms,²⁸ the Commission’s statutory framework for approving decoupling mechanisms was focused on the revenue impacts of utility energy efficiency programs. As summarized in the recent NW Natural rate case order,

Importantly, the Commission’s 2010 Decoupling Policy Statement begins by outlining the Commission’s statutory framework for approving decoupling mechanisms; namely, RCW 19.285 requires utilities to pursue all available cost-effective conservation, and RCW 80.28.260(3) allows the Commission to adopt policies to protect utilities from a reduction of short-term earnings that may be the direct result of utility programs to increase the efficiency of energy use.²⁹

13. Given the original intent of decoupling policies and the statutory framework for approving decoupling programs, Public Counsel questions whether the mechanism should be retained as proposed when weather variations, not energy efficiency savings, can dominate the mechanism. Public Counsel recommends that Avista’s decoupling mechanism be modified to directly account for energy savings from approved energy efficiency and conservation programs. This modification will better align the mechanism with the original intent of decoupling policy.

14. Public Counsel is not suggesting that the Commission not address customer bill volatility due to weather. Decoupling, however, may not be the most appropriate method for addressing this issue. The mechanism was not specifically designed to address customer bill volatility due to weather, and there may be other options that provide better protections for customers from seasonal weather variations than decoupling.

²⁷ *Id.* at 4-7.

²⁸ Decoupling Policy Statement, ¶ 12.

²⁹ NW Natural GRC Order, ¶ 31 (emphasis added).

15. Staff criticizes Public Counsel’s recommendation and states that it is “not possible to disaggregate the causes of load variations in the way Public Counsel requests.”³⁰ However, Avista’s testimony clearly indicates that it is possible to measure the impact of energy efficiency and conservation programs implemented by the utility on customer usage.³¹

16. Avista’s witness, Patrick Erhbar, also argues against modifying the decoupling mechanism, stating that decoupling removes the disincentives towards distributed generation.³² The use of decoupling mechanisms to encourage distributed generation, however, was not contemplated in the Commission’s policy statement nor statutory framework for approving decoupling mechanisms. Mr. Erhbar’s assertion implies that decoupling is the proper mechanism to promote distributed generation. Given existing and new statutes promoting a clean energy transition and the requirements contained therein, Public Counsel recommends the Commission engage in a comprehensive assessment of decoupling as a mechanism to reduce barriers to distributed generation before relying on the mechanism for this purpose. If the Commission determines that decoupling is required for distributed generation as well as energy efficiency at this time, the mechanism can be limited to allow recovery of revenue directly related to both energy efficiency and distributed generation.

IV. ENERGY RECOVERY MECHANISM

17. By stipulation, parties have agreed that the customer deferral amount will be passed back to customers over a two-year period beginning April 1, 2020. Issues related to the amount of the customer deferral are being litigated in Docket UE-190882, a combined investigation docket

³⁰ Cross-Answering Testimony of Elaine L. Jordan, Exh. ELJ-1T at 7:9–15.

³¹ Direct Testimony of Pat D. Ehrbar, Exh. PDE-1T at 10:1–21 and 15:1–4; Ehrbar, TR. 231:17–232:6.

³² Ehrbar, TR. 235:8–16.

evaluating the prudence of the actions taken by the co-owners of the Colstrip electric generation plant prior to a forced outage in summer 2018.

18. In this docket, Public Counsel provides information regarding the directionally biased calculations first identified in Avista’s 2017 general rate case, Dockets UE-170485 and UG-170486 (Avista’s 2017 GRC), and asks the Commission to continue its support for the power cost workgroup, to reaffirm its finding of directional bias, and to require Avista to implement corrections to its power cost modeling by its next rate case.

A. The Commission Should Continue to Support the Workgroup Process Related to Avista’s ERM and Should Reaffirm Its Finding of Directional Bias in Avista’s Modeling.

19. The Commission ordered Avista to work with parties, peer utilities, and modeling experts to discuss “ways in which the Company may document the functionality and rationale of its power cost modeling and make changes to eliminate its directional bias.”³³ Avista, Commission Staff, Public Counsel, and AWEC have participated in the workgroup and have engaged in a series of workshops to discuss Avista’s modeling practices and potential improvements.³⁴ The workgroup process has allowed for robust discussions regarding Avista’s modeling and the existence of directional bias. The discussions are ongoing and likely headed in a useful direction. As a result, Public Counsel asks the Commission to continue to support the workgroup process.

³³ *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-170485 and UG-170486, Order 07, Final Order, ¶ 161 (Apr. 26, 2018) (“Avista 2017 GRC Order”).

³⁴ Response Testimony of Avi Allison, Exh. AA-1T at 6:9–16.

20. Additionally, because Avista’s 2018 net power cost calculations exhibit the same upward bias present in previous years, Public Counsel also recommends that the Commission reaffirm its finding that Avista’s modeling is directionally biased.³⁵

21. Public Counsel demonstrates one potential cause for the directional bias. Mr. Avi Allison testifies that Avista’s “calculations of 2018 pro forma gas transport optimization revenues were biased in a way that predictably contributed to actual 2018 net power costs being lower than authorized levels.”³⁶ Although Avista accounted for optimization revenues in its modeling, it did so in a way that “was inconsistent with market evidence and [Avista’s] own standard process for forecasting commodity prices.”³⁷ This argument is based on what Avista knew at the time it set the ERM baseline.

22. In forecasting commodity prices, Avista generally relies heavily on forward market prices. For example, Avista used market forwards to set its natural gas price input assumption. Further, Avista adjusted inputs in the AURORA electric dispatch model to align the energy price output with forwards prices.³⁸ With respect to natural gas transport optimization revenues,³⁹ however, Avista reviewed forward pricing, and reduced the forward market price by more than \$4 million based on historic average estimates.⁴⁰ By reducing the forwards market price assumption, Avista indicated that it believed that optimization revenues would be lower than

³⁵ See, Avista 2017 GRC Order, ¶ 156 (“What is clear in the record is that Avista’s power cost forecasts have been consistently unbalanced in the Company’s favor over recent years.”).

³⁶ Allison, Exh. AA-1T at 8:10–12.

³⁷ Allison, Exh. AA-1T at 8:12–15.

³⁸ Allison, Exh. AA-1T at 8:18–9:3.

³⁹ Natural gas transportation optimization revenues result from the price differential between AECO and Malin.

⁴⁰ Allison, Exh. AA-1T at 9:4–17; Kalich TR. 245:18 to 246:9.

what the forwards markets were predicting.⁴¹ Instead, the spread between AECO and Malin continued to grow, as predicted by the forwards markets.⁴²

23. In no other instance does Avista rely on historical data to forecast commodity prices used to set authorized power costs. Avista's departure from its reliance on forwards pricing to forecast commodity prices utilizes an unreasonably contradictory set of assumptions within the same modeling process.⁴³ Public Counsel believes this practice explains, in large part, the directional bias in favor of the Company present over the last several years, and we will continue to work with Avista and other parties in the workgroup on these issues

B. The Commission Should Require Avista to Complete the Workgroup Process and Correct Identified Errors and Biases Affecting Its Net Power Cost Calculations No Later than Avista's Next General Rate Case.

24. In its Final Order to Avista's 2017 GRC, the Commission asked Avista to identify any resulting changes in its modeling methodology in its next general rate case filing.⁴⁴ Avista's current general rate case was filed before the workgroup completed its work. The workgroup is diligently working through issues related to Avista's power cost modeling. The Commission should require Avista to implement corrections to biases identified through the workgroup process no later than its next general rate case so that Avista's authorized baseline power cost can be more accurately set.

⁴¹ Kalich, TR. 246:10–248:17.

⁴² Rebuttal Testimony of Clint G. Kalich, Exh. CGK-3T at 4:21–22; Kalich, TR 248:3-17.

⁴³ Allison, Exh. AA-1T at 10:1–15.

⁴⁴ Avista 2017 GRC Order, ¶ 161.

V. CONCLUSION

25. Public Counsel respectfully requests that the Commission modify the Stipulation to limit the increase to no more than \$5.08 million because the record of this proceeding does not support a natural gas revenue requirement increase of \$8.0 million, as included in the Stipulation. Public Counsel further recommends that the Commission modify the decoupling mechanism to account for revenue directly attributable to Avista's energy efficiency and conservation measures in order to bring the mechanism more in line with the stated policy goals of decoupling. Public Counsel also recommends the Commission continue to support the workgroup process related to Avista's ERM and reaffirm its finding of directional bias in Avista's modeling. Finally, Public Counsel recommends the Commission require Avista to complete the workgroup process and correct identified errors and biases affecting its net power cost calculations no later than Avista's next general rate case.

DATED this 5th day of February, 2020.

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