

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

AVISTA CORPORATION d/b/a  
AVISTA UTILITIES

Energy Recovery Mechanism Annual  
Review for 2022 and Proposed Tariff for  
Surcharge of Overall Deferral Balances

DOCKET UE-230214

STAFF'S ANSWER TO AWEC'S  
PETITION FOR ADJUDICATION

1 Avista filed in this docket tariff pages providing for surcharges for recovery of the accrued deferral balance in its Energy Recovery Mechanism (ERM). The Alliance of Western Energy Consumers (AWEC) seeks a formal adjudication as to those tariff revisions so that it may investigate two issues. Staff neither joins nor opposes AWEC's petition. However, Staff recommends that if the Commission determines further investigation is warranted, the Commission authorize Avista to charge the proposed tariff rates on an interim basis to ensure that any delay in recovery of the ERM balance does not negatively affect Avista's credit.

**I. BACKGROUND**

2 Under the ERM, Avista defers a portion of any difference between its actual and approved baseline power costs on a monthly basis.<sup>1</sup> The company accumulates the monthly deferrals, and, once the deferred balance reaches a set threshold, Avista must file tariff revisions to either surcharge customers for, or rebate to customers, the balance.<sup>2</sup>

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<sup>1</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket UE-011595, 20 ¶ 67 (June 18, 2002); *id.* at Appx. A at 4-6 ¶ 3. Avista witness Kinney sets out the current sharing bands in his testimony. Kinney, Exh. SJK-1T at 31, Table No. 6.

<sup>2</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-120436, UG-120437, UE-110876 & UG-110877; Order 09/Order 14, at 13 ¶ 35 (Dec. 26, 2012).

3 Avista must demonstrate the prudence of these monthly deferrals through an annual  
filing. Parties have 90 days to review the filing, unless all parties (including the company)  
agree to extend the review period or the Commission extends it by order.<sup>3</sup> Avista made its  
2022 ERM filing and tariff revisions intended to surcharge customers \$34.6 million dollars  
on March 23, 2023.<sup>4</sup>

4 AWEC sought time for further investigation of the 2022 filing, but Avista refused to  
agree to extend the review period.<sup>5</sup> AWEC, accordingly, filed this petition, seeking an  
adjudication that would suspend the tariff revisions and allow it to investigate two issues:<sup>6</sup>  
whether Avista (1) “was . . . sufficiently hedged” for the December 2022 price spikes that  
drove the large ERM deferral and whether the company “acted in accordance with its  
hedging practices . . . to avoid . . . major impacts to customers,”<sup>7</sup> and (2) “made daily gas  
sales that were much more valuable than the gas sales that it has allocated to electric  
service.”<sup>8</sup>

## II. ARGUMENT

5 Staff neither joins nor opposes AWEC’s request for relief. But Staff does offer a  
recommendation if the Commission grants the petition, specifically that the Commission  
authorize Avista to charge the as-filed tariff rates on an interim basis. This will ensure that

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<sup>3</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Docket UE-011595, at Appx. A. at 6-7 ¶ 4.b.

<sup>4</sup> Avista’s power costs exceeded the baseline by \$48,834,582 for 2022. Kinney, Exh. SJK-1T at 2:25-3:1. Avista absorbed \$10,883,458 of that amount due to the ERM’s sharing bands, leaving a surcharge of \$37,951,124. Kinney, Exh. SJK-1T at 3:2-3. Avista reached the as-filed surcharge of \$34.6 million by netting the 2022 surcharge amount against unamortized ERM rebate balances and deferred amounts related to benefits Avista realized through participation in the California Independent Systems Operator’s Energy Imbalance Market, then adjusting the resulting amount for accrued interest and other revenue conversion items. Ehrbar, Exh. PDE-1T at 6:14-7:20.

<sup>5</sup> Kinney, Exh. SKJ-1T at 3:21-22; Ehrbar, Exh. PDE-1T at 14:12-20.

<sup>6</sup> See generally *in re Avista Corp.*, Docket UG-230214, Petition for Adjudication of the Alliance of W. Energy Consumers (June 5, 2023) (“Petition”).

<sup>7</sup> Petition at 3 ¶ 6.

<sup>8</sup> Petition at 3 ¶ 7.

the adjudication does not affect the company's credit rating while at the same time ensuring that Avista would have to refund any portion of the as-filed rate if the Commission finds merit to AWEC's claim and deems the as-filed rate unjust.

6           Staff takes no position on AWEC's petition after balancing two considerations. First, Staff reviewed Avista's filing and found no issues.<sup>9</sup> But Staff's review was necessarily limited by the 90-day review period time limit and its own resource constraints.<sup>10</sup> Accordingly, Staff cannot say that further investigation by AWEC will not result in uncovering issues with Avista's filing. Second, Staff is aware that S&P has placed Avista on negative credit watch,<sup>11</sup> and is concerned about any negative impacts a lengthy adjudication could have on the company's credit outlook, with concomitant effects on the return on equity the Commission may need to set in any future general rate case.<sup>12</sup> Staff balanced the potential merit in further investigation with the dangers a drawn out process presents to Avista's credit rating, and it concluded that it should neither support nor oppose the request for an adjudication.

7           If the Commission does determine that further investigation is warranted here, Staff recommends that the Commission allow Avista's filed tariffs to become effective on an interim basis, with those rates subject to refund should the Commission determine AWEC's claims have merit.<sup>13</sup>

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<sup>9</sup> Decl. of Alex Tellez at 1 ¶ 3.

<sup>10</sup> See Decl. of Alex Tellez at 1 ¶ 4.

<sup>11</sup> Decl. of Alex Tellez at 1 ¶ 3.

<sup>12</sup> RCW 80.28.020.

<sup>13</sup> If the Commission goes this route, it should deny AWEC's petition, suspend Avista's tariff on its motion, and then allow Avista to charge the tariff rates on an interim basis, with those rates subject to refund. Doing so would satisfy all the prerequisites for authorizing interim rates. See *State ex rel. Puget Sound Navigation Co. v. Dep't of Transp.*, 33 Wn.2d 448, 455, 476-84, 206 P.2d 456 (1949).

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The law that the Commission applies to a request for interim rates is malleable. The Commission has set out certain factors that it *may* consider when deciding whether to approve an interim change in rates. Those factors (dubbed the *PNB* factors<sup>14</sup>) “are: an opportunity for an adequate hearing, a demonstration that an actual emergency exists or that interim rates are necessary to prevent gross hardship or gross inequity (the failure to earn the authorized rate of return is not sufficient, standing alone, to justify the grant of interim relief), examination of key financial indices, jeopardy to the utility or detriment to ratepayers, and whether the relief is in the public interest.”<sup>15</sup> But the Commission has also disclaimed any intent to be bound by those factors, stating:

The Commission is not bound by any specific criteria for granting interim rate relief. . . While it has identified the six factors that are appropriate to discuss, [t]he Commission has made clear that these factors are not standards to be mechanically applied, and that not all factors are applicable to all companies. The caution against a formulaic approach is common to several recent orders.<sup>16</sup>

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If the Commission applies them, the *PNB* factors favor allowing Avista to charge interim rates here.

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The first factor concerns the opportunity for hearing. While these rates would go into effect before a final hearing, the Commission has authorized such treatment before.<sup>17</sup> Allowing interim rates before final disposition of this matter is appropriate because the Commission can protect ratepayers from any harm by compensating them for the time value of money with any refund owed to them.

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<sup>14</sup> The name comes from the case where the Commission set the factors out. *See Wash. Utils. & Transp. Comm’n v. P. Nw. Bell Tel. Co.*, Cause U-72-30, Second Supplemental Order (Oct. 10, 1972).

<sup>15</sup> *Wash. Utils. & Transp. Comm’n v. Verizon Nw., Inc.*, Docket UT-040788, Order 05, 2 ¶ 4 (July 2, 2004).

<sup>16</sup> *Verizon Nw.*, Docket UT-040788, Order 05, at 4-5 ¶ 13 (internal quotations omitted).

<sup>17</sup> *E.g., Wash. Utils. & Transp. Comm’n v. Pac. Nw. Bell. Tel. Co.*, Docket U-87-1083-T, Second Supplemental Order Allowing Interim Rates (Aug. 26, 1987).

11 Factors two through five concern the financial health of the utility. Avista has represented to the Commission a number of times in recent years that it is engaged in an extensive build out of its facilities, and that it thus needs access to significant amounts of capital.<sup>18</sup> And the utility industry generally has been stressed by the COVID-19 pandemic and inflationary pressures over the last few years.<sup>19</sup> S&P has placed Avista on a negative credit watch for these or other reasons.<sup>20</sup> Staff is concerned that a drawn-out investigation and a delay in the recovery of the significant ERM balance may negatively impact Avista’s credit rating. Such a downgrade, and the attendant increase in the required return on equity in future Avista rate proceedings, would detrimentally affect both the company and ratepayers, probably significantly.

12 The final factor is the public interest, the Commission’s overriding concern.<sup>21</sup> As just hinted at, Staff is concerned about both Avista’s financial health and the protection of its consumers. Allowing Avista to charge rates on an interim basis, subject to refund, should balance those interests, and the Commission should consider doing so if it grants AWEC’s petition.<sup>22</sup>

13 If the Commission declines to apply the *PNB* factors, it should still authorize interim rates here. Again, the Commission’s overriding goal is a fair balance between the interests

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<sup>18</sup> *E.g.*, *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-220053 & UG-220054, Vermillion, Exh. DPV-1T at 31:16-35:17 (Jan. 25, 2022); *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-220053 & UG-220054, Thies, Exh. MTT-1T at 3:11-20 (Jan. 25, 2022).

<sup>19</sup> See *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-220053 & UG-220054, McKenzie, Exh. AMM-1T at 21:12-22:5 (Jan. 25, 2022).

<sup>20</sup> Decl. of Alex Tellez at 1 ¶ 3.

<sup>21</sup> See RCW 80.28.020.

<sup>22</sup> *Cf. People’s Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm’n*, 104 Wn.2d 798, 806, 711 P.2d 319 (1985) (POWER) (“the UTC must in each rate case endeavor to not only assure fair prices and services to customers, but also to assure that regulated utilities earn enough to remain in business – each of which functions is as important in the eyes of the law as the other.”)

of customers and the utility.<sup>23</sup> Authorizing interim rates would ensure that Avista can begin recovery of the large ERM surcharge deferral while at the same time ensuring that ratepayers would see refunds if the Commission determines that the as-filed tariffs are unfair, unjust, or unreasonable for customers.

### III. CONCLUSION

14 If the Commission believes that further investigation of Avista's ERM filing is needed, it should authorize the company to charge the tariff rates on an interim basis.

DATED this 25th day of June, 2023.

Respectfully submitted,

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<sup>23</sup> *POWER*, 104 Wn.2d at 806.