

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a  
AVISTA UTILITIES,

Respondent.

DOCKETS UE-200900,  
UG-200901, and UE-200894  
*(Consolidated)*

SIERRA CLUB

**POST-HEARING BRIEF OF  
SIERRA CLUB**

**Confidential per protective order – REDACTED VERSION**

**August 13, 2021**

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## I. INTRODUCTION

1. The Sierra Club (“Club”) hereby respectfully submits this Post-Hearing Brief to the Washington Utilities and Transportation Commission (“UTC” or “Commission”) in the Avista Corporation (“Avista”) 2020 rate case with regard to the Colstrip-related issues not settled; namely, the inclusion of SmartBurn<sup>1</sup> and dry ash remediation expenses in rates. The Partial Multiparty Settlement Stipulation was previously addressed in joint testimony and Sierra Club does not plan to discuss it here.
2. The Commission should disallow all SmartBurn costs and hold any recovery for dry ash waste remediation, if it is ever needed, to a future rate case. Avista has not presented sufficient evidence of prudence for SmartBurn and the dry ash costs are too speculative to be recovered at this time.

## II. DISCUSSION

### A. Avista’s \$2.74 Million Share of SmartBurn Expenses Should Be Disallowed

3. The Commission should fully disallow Avista’s \$2.74 million share of SmartBurn costs. Avista has not met the Commission standard for prudence. Prudence is determined by “what information was known or reasonably should have been known, when it was known, and how it was considered in the decision-making process. When evaluating prudence, therefore, the Commission must require from a regulated utility

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<sup>1</sup> SmartBurn, according to Avista, was intended to optimize the combustion process in coal-fired generation plants to reduce pollutants produced during combustion. NOx is a haze-causing pollutant that is regulated under the Regional Haze Rule.

contemporaneous documentation of its decision making.”<sup>2</sup> Avista bears the burden of proof for a prudence determination.<sup>3</sup>

4. SmartBurn was included in Avista capital budgets dating back to 2012. The co-owners voted on installation in March 2015. SmartBurn was installed in Unit 4 in 2016, and installation on Unit 3 was completed in 2017. Avista’s Washington share of SmartBurn costs was \$2.74 million.<sup>4</sup>
5. Avista’s ever-evolving story still does not support the SmartBurn installation. The SmartBurn issue has been before the Commission in four previous rate cases in which discovery was conducted (2016, 2017, 2019 and 2020).<sup>5</sup> The Commission, concurring with Staff’s assessment, has long expressed skepticism with Avista’s inclusion of SmartBurn in rates citing that no state or federal law required its installation, and that insufficient information had been provided related to Avista’s investments at Units 3 and 4.<sup>6</sup>
6. In the 2019 Avista GRC, Avista agreed to “provide detailed information, including a complete record of the decision making and a full accounting of the costs related to those capital expenditures on an annual basis.”<sup>7</sup> Despite this mandate, Avista’s

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<sup>2</sup> *In the Matter of the Investigation of Avista Corp., d/b/a Avista Utils., Puget Sound Energy, & Pac. Power & Light Co. Regarding Prudency of Outage & Replacement Power Costs*, Docket No. UE-190882, Order No. 05 at 12 (Mar. 20, 2020).

<sup>3</sup> *Id.* (“Regulated companies bear the burden of proving their decisions were prudent.”)

<sup>4</sup> Burgess, Exh. EB-1CT at 6:11-16.

<sup>5</sup> Gomez, Exh. DCG-1CT at 34:12-19.

<sup>6</sup> *Id.* at 34:21-35:18 (citing *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Docket Nos. UE-170485, UG-170486, UE-171221, & UG-171222, Order. No. 07 at 68-69 (Apr. 26, 2018)).

<sup>7</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Docket Nos. UE-190334, UG-190335, & UG-190222, Order No. 09 para. 51 (Mar. 25, 2020) [hereinafter “2019 Avista Order”]. *See also* Burgess, Exh. EB-1CT at 12:5-13:2 (noting Commission concerns that there was insufficient information on SmartBurn, that the investment did not appear to be required by state or federal

opening testimony on SmartBurn was vague and insufficient and has changed significantly on rebuttal.<sup>8</sup> Avista should not be rewarded for such litigation conduct. Avista did not conduct a contemporaneous prudency analysis of SmartBurn, the 2015 TRC BACT report does not meet Commission standard for a prudency analysis and was produced too late in these cases to be accorded value, and the shifting story on the SmartBurn decision timeline undermines Avista's credibility.

7. The Commission should disallow the \$2.74 mil SmartBurn share just as it did for Puget Sound Energy.<sup>9</sup> Avista has not presented compelling evidence to deviate from this Commission precedent.

1. **Avista did not conduct a contemporaneous prudency analysis of SmartBurn**

8. In a prudency analysis, utilities much show that their analyses “are reasonable compared to other alternatives a company considered at the time the decision...was made. A company must support its decision with sufficient evidence.”<sup>10</sup> Here, Avista

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law, that the compliance obligations were purely speculative, and that the Colstrip co-owners did not proactively take into account other coal unit retirements).

<sup>8</sup> Gomez, Exh. DCG-1CT at 21:7-17 (noting how Staff worked with Avista to propound extensive discovery to fill in blanks in Avista's opening testimony).

<sup>9</sup> 2019 PSE Order, *supra* note 7, paras. 184-199 (disallowing \$7.2 million in SmartBurn costs based on failure to Puget Sound Energy's failure to maintain contemporaneous documentation).

<sup>10</sup> *In the Matter of the Comm'n Inquiry into the Valuation of Pub. Serv. Co. Prop. That Becomes Used & Useful After Rate Effective Date*, Docket No. U-190531, Policy Statement at 9 n.34 (Jan. 31, 2020)

(citing *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Docket Nos. UE-920433, UE-920499, & UE-921262, 11th Supplemental Order at 18-24 (Sept. 21, 1993))

[hereinafter “Policy Statement on Property That Becomes Used and Useful After Rate Effective Date”]; *In the Matter of the Wash. Utils. & Transp. Comm'n Investigation into Energy Storage Techs.*, Docket Nos. UE-151069 & U-161024, Policy Statement para. 37 (Oct. 11, 2017) (“In such analyses, utilities must demonstrate that they have reasonably considered all of the costs and benefits of each option, to allow for comparison on similar terms and planning assumptions.”)

fails to show alternatives were considered and its evidence for contemporaneous analysis is thin. Avista claims “the Colstrip Owners proactively installed the SmartBurn...[to] (1) Make a proactive and verifiable NOx reduction and (2) Optimize the size, scope and ammonia use of any future SCR installation.”<sup>11</sup>

9. Yet Avista’s documentation for SmartBurn fails on both counts. Putting aside the fact that there was no legal or policy requirement in 2012 or 2015 for NOx reductions at Colstrip, the NOx reductions SmartBurn achieved were [REDACTED] at best.<sup>12</sup> And in terms of whether SmartBurn would reduce the size or eliminate the need for a future Selective Catalytic Reduction (“SCR”), Avista notably concedes that “pricing for a reduce[d] size SCR was not obtained.”<sup>13</sup> If Avista truly thought SmartBurn would reduce the size of its supposed future SCR, Avista would have evaluated this scenario. Yet, Avista never priced out what a smaller SCR would cost to compare it to a larger SCR without SmartBurn, thus a valid economic analysis of alternatives was never done.<sup>14</sup> Put another way, “the expected benefits of SmartBurn were not adequately quantified against the expected costs under a ‘business as usual approach.’”<sup>15</sup> Avista did not conduct its own independent analysis on the prudence of SmartBurn. And the late-produced TRC BACT

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<sup>11</sup> Thackston, Exh. JRT-1T at 59:13-17.

<sup>12</sup> Burgess, Exh. EB-1CT at 22:18-20 (noting only [REDACTED] NOx reduction where a [REDACTED] had been projected); *Id.* at 23:1 (citing Avista confidential response to Sierra Club Discovery Request 002C, Confidential Attach. A).

<sup>13</sup> Burgess, Exh. BE-5.

<sup>14</sup> Burgess, Exh. EB-1CT at 15:4-10 (noting that comparing SCR capital costs versus Avista’s share of SmartBurn costs was not sufficient “without additional context of how each performs relative to prevailing emissions requirements (assuming such requirements were to come into existence.”) Avista apparently assumed that a future SCR would cost \$105 million and \$565,000 annually compared to an Avista share of \$4.2 million for SmartBurn. *See* Thackston, Exh. JRT-10 at 4.

<sup>15</sup> Burgess, Exh. EB-1CT at 15:17-19.

Report for the Colstrip co-owners, is not such a prudency analysis, as discussed in-depth below.

**2. TRC BACT Report is flawed and produced too late for the Commission to accord it evidentiary value**

10. The 2015 TRC BACT Report (“TRC Report”), created at the behest of PPL Montana (later Talen), was produced in discovery too late in this case, and Avista overclaims it to support its decision to install SmartBurn.<sup>16</sup> The heavily redacted TRC Report, produced on the eve of response testimony in this case, is not even referenced in Avista witness Thackston’s 106 pages of opening testimony.<sup>17</sup> Yet, on rebuttal, Mr. Thackston claims that the TRC Report was the “basis for the Colstrip parties’ final decision to move ahead with SmartBurn.”<sup>18</sup> If such a report were the real basis for the SmartBurn decision, one would expect at least a passing reference in Avista’s opening testimony in this case or in one of its many previous rate cases where SmartBurn recovery was at issue and data was sought, such as last year’s 2019 General Rate Case.<sup>19</sup>

[REDACTED]

[REDACTED]

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<sup>16</sup> Thackston, Exh. JRT-13C.

<sup>17</sup> The TRC Report is heavily redacted making several portions difficult to interpret since large sections of the report are missing. Since the report was deemed confidential, Avista could have provided the report in its entirety rather than leave the Commission and parties to wonder about what is missing or the context for many statements.

<sup>18</sup> Thackston, Exh. JRT-12T at 12:4-5.

<sup>19</sup> Avista has been subject to data requests pertaining to SmartBurn in previous rate cases. On the heels of the 2019 GRC Commission mandate that Avista provide a full accounting on SmartBurn, presenting opening testimony that apparently omits key information on which Avista relies heavily on rebuttal does not meet this directive. Litigation tactics to produce information late in the game and omitting it in opening testimony should not be rewarded. This information was not just omitted in this rate case, but in three previous rate cases.

[REDACTED]

[REDACTED]<sup>20</sup> The story about the TRC BACT Report being Avista’s prudence analysis and the basis for its decision to install SmartBurn does not add up.

11. Even if the Commission were to consider this TRC BACT Report as potential supporting evidence, it is deeply flawed and is not a prudence analysis because it does not reasonably analyze alternatives as the Commission’s prudence standard requires.<sup>21</sup> First, the TRC report does not have a proper comparison of alternatives. The TRC report does [REDACTED]. Instead, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>22</sup> The TCR report basically assumes SmartBurn was a *fait accompli* rather than evaluate it as one possible option that Avista and the other co-owners could pursue. Comparing the SCR capital costs of \$105 million and \$565,000 annually versus Avista’s \$4.2 million share of SmartBurn costs is not a meaningful comparison without context about how each technology performs relative to emissions requirements (especially when no such emissions requirements ever existed). A better comparison of alternatives would have involved comparing SmartBurn costs against “the cost savings of installing and operating a smaller sized SCR.”<sup>23</sup> Avista never completed

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<sup>20</sup> Burgess, Exh. EB-1CT at 17:9-12.

<sup>21</sup> Policy Statement on Property That Becomes Used and Useful After Rate Effective Date, *supra* note 10, at 9 n.24 (citing *Wash. Utils. & Transp. Comm’n v. Puget Sound Power & Light Co.*, Docket Nos. UE-920433, UE-920499, & UE-921262, 11th Supplemental Order at 18-24 (Sept. 21, 1993)).

<sup>22</sup> Burgess, Exh. EG-1CT at 14:17-15:10; 18:14-16. *See also* Thackston, Exh. JRT-13C at 9.

<sup>23</sup> Burgess, Exh. EB-1CT at 15:7-9.

such a comparison, and thus fails to meet the Commission’s prudence standards requiring a reasonable comparison of the costs and benefits of each option.

12. It’s not clear if Avista thought SmartBurn would reduce the size of a future SCR, or eliminate the need altogether, if both would be needed or what exactly. Mr. Thackston, on rebuttal, also claims that [REDACTED]

[REDACTED]

[REDACTED].<sup>24</sup> [REDACTED]

[REDACTED]. This stands in [REDACTED] to Mr. Thackston’s earlier testimony that Avista did not intend for SmartBurn to replace the SCR and that both SCR and SmartBurn would be needed around 2027.<sup>25</sup> It also [REDACTED] with Mr. Thackston’s testimony that SmartBurn was intended to *reduce the size, scope and chemical use of a later SCR*.<sup>26</sup> Thus, the TRC Report only serves to “raise[] more questions and doubts about Avista’s decision-making process and the timeline of events that led to SmartBurn.”<sup>27</sup>

13. Other TRC Report flaws include:

- a. Avista assumes a cost savings of \$500-800,000 in the 2012-15 timeframe for reduced chemical costs from using SmartBurn. These numbers lack supporting workpapers and contemporaneous documentation and those

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<sup>24</sup> Thackston, Exh. JRT-12T at 2:36-3:3.

<sup>25</sup> Thackston, Exh. JRT-1T at 63:7-10 & 67:21-24.

<sup>26</sup> *Id.* at 59:13-17.

<sup>27</sup> Burgess, Exh. EB-1CT at 14:8-10.

figures are not found in the TRC Report that Avista cited for this chemical savings proposition.<sup>28</sup>

b. The TRC Report's savings estimates do not include O&M costs for SmartBurn itself, which are approximately \$ [REDACTED] and could partially offset the O&M savings Avista estimated.<sup>29</sup>

c. The baseline and capacity factors that the TRC Report uses are flawed. The TRC Report assumes a [REDACTED] [REDACTED] after SmartBurn control [REDACTED]. Instead, the rate should be closer to 0.14-15lb/MMBtu, according to Avista's response to SC DR002, which is [REDACTED] than the BACT assumption and exaggerates SmartBurn reductions by [REDACTED]. The [REDACTED] capacity factor used was also [REDACTED] [REDACTED].

These flaws in the TRC Report's assumptions inflate the purported SmartBurn benefits.<sup>30</sup>

14. Apart from the flaws in the TRC Report itself, there is other evidence in the record that calls into question the value of this report. The TRC BACT report was written in February 2015, just prior to the March 2015 Colstrip owners meeting minutes showing a vote to approve SmartBurn. There are virtually no details in those meeting minutes as to

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<sup>28</sup> *Id.* at 18:6-16 (noting that while Avista says [REDACTED] provide support, the TRC Report *did not include those values*, and nor did the report [REDACTED]). *See also* Burgess, Exh. EB-6C.

<sup>29</sup> Burgess, Exh. EB-1CT at 18:16-20 (citing Burgess, Exh. EB-4C).

<sup>30</sup> *Id.* at 21:12-21.

[REDACTED].<sup>31</sup> There are also no emails, meeting minutes, or other evidence in the 2012-15 timeframe leading up to the March 2015 vote.<sup>32</sup> And Colstrip was included in Avista's Colstrip capital budget dating back to "2012 without any clear regulatory requirement or documented, contemporaneous economic analysis" to justify it.<sup>33</sup> Both a 2012 and 2015 decision for SmartBurn lack adequate support at the time the decisions were made.

15. Tellingly, the other Colstrip co-owners also acted differently than Avista even after the TRC report. Talen, as plant operator, after the February 2015 TRC report and EPA's proposal in 2016 to delay the review period to 2021, [REDACTED]

[REDACTED]

[REDACTED].<sup>34</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>35</sup>

16. In addition, Avista's 2015 IRP modeling, filed in August 2015, assumes that an SCR would be required by the end of 2026.<sup>36</sup> Then in 2017, the Avista IRP projects an SCR requirement in 2028. Avista, with the February 2015 TRC Report in hand before both the 2015 and 2017 IRPs were submitted to the Commission, still seemingly believed

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<sup>31</sup> *Id.* at 20:3-5 (citing Burgess, Exh. EB-7C).

<sup>32</sup> *Id.* at 20:5-7.

<sup>33</sup> *Id.* at 17:13-16.

<sup>34</sup> *Id.* at 20:19-21:3.

<sup>35</sup> *Id.* at 8:4-7; Burgess, Exh. EB-4C at 11.

<sup>36</sup> Thackston, Exh. JRT-10; Burgess, Exh. EB-1CT at 19:4-15.

that an SCR [REDACTED], and presented assumptions to the Commission as such. Avista appears not to have analyzed whether SmartBurn would actually reduce the scope or cost of such an SCR. Even if such an analysis were conducted by the co-owners, there is no evidence of it in this case, and Avista did not take the results of such an analysis seriously in its subsequent planning process.

### **3. Conflicting accounts of the SmartBurn decision timeframe erode the credibility of Avista’s ever-changing story**

17. The SmartBurn decision timeframe serves as yet another example of the inconsistencies with Avista’s SmartBurn story. Avista witness Thackston’s opening testimony emphasized time and time again that the SmartBurn decision was made back in 2012. In at least nine instances in Thackston’s opening, he references the 2012 decision timeframe.<sup>37</sup>
18. Then, on rebuttal, suddenly Mr. Thackston’s story about the SmartBurn decision timeline changes again. Mr. Thackston says instead that Avista made the only the *initial* decision to install SmartBurn in 2012 and the *final* decision occurred in 2015.<sup>38</sup> Whether

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<sup>37</sup> Thackston, Exh. JRT-1T at 57 (“...in the 2012 decision timeframe”); *Id.* at 58:6-13 (“Q. What was known about the NOx emission requirements for Colstrip Units 3 and 4 when the Company’s *decision to install SmartBurn was made in 2012*?”); *Id.* at 59:11 (“The decision to install SmartBurn occurred in 2012.”); *Id.* at 62:4-10 (“Q: So what other evidence suggests that investment in SmartBurn was prudent *when decision was made in 2012*?”); *Id.* at 62:7-8 (“The reasonable plant operator at the time (2012) of course could not predict whether SCR would be required...”); *Id.* at 62:19-21 (“Q. *At the time of the decision in 2012 to install SmartBurn*, was it reasonable to assume that additional NOx reductions would be required in the future?”); *Id.* at 65:2 (“...when the SmartBurn decision was made in 2012.”); *Id.* at 66:11 (“The decision to install SmartBurn was made in 2012...”); *Id.* at 66:21 (“At the time the decision to install SmartBurn was made in 2012...”).

<sup>38</sup> Thackston, Exh. JRT-12T at 12:8-17.

Avista made the decision in 2012, or in 2015, or a decision at both of those times, Avista still lacks contemporaneous analysis to support a prudence finding.

**4. SmartBurn was not and still is not legally required and its installation was speculative at best**

19. There has been no legal mandate requiring SCR at any point in time for Colstrip. SmartBurn installation was premature and speculative, and the regulation never materialized. EPA finalized regional haze plans in Montana on September 18, 2012 but because they were constructed after 1977, Colstrip Units 3 and 4 were not subject to the Regional Haze Best Available Retrofit Technology requirements. The units were just considered part of the long-term FIP strategy to achieve reasonable progress towards visibility under the Clean Air Act.<sup>39</sup> The second planning period for Regional Haze covered 2018-2028 and originally called for State Implementation Plans to be submitted for EPA approval by July 31, 2018, but this deadline was delayed to July 31, 2021.<sup>40</sup> In May 2016, EPA originally proposed the delay of the SIP review period to 2021.<sup>41</sup>

20. At the same time EPA proposed this delay, SmartBurn was installed at Unit 4.

Apparently, based on this delay, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>42</sup> Avista was not

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<sup>39</sup> “Whether additional emissions reductions from reasonable progress sources, including Colstrip Units 3 and 4, are necessary will be re-evaluated in subsequent planning periods.” 77 Fed. Reg. 57,864, 57,902 (Sept. 18, 2012).

<sup>40</sup> Burgess, Exh. EB-1CT at 7:8-11.

<sup>41</sup> 81 Fed. Reg. 26,942, 26,944 (May 4, 2016).

<sup>42</sup> Burgess, Exh. EB-1CT at 8:3-7 (citing Burgess, Exh. EB-4C at 1).

required to install SmartBurn by the EPA Regional Haze Rule nor indirectly required by any future SCR requirement.<sup>43</sup>

21. The SmartBurn decision, whether made in 2012 or in 2015 or somewhere in between, lacks contemporaneous documentation to justify its inclusion in Colstrip capital budgets dating back to 2012,<sup>44</sup> and the 2015 TRC Report does not contain the sort of valid comparisons needed to analyze alternatives in the manner required by Washington's laws on prudence.<sup>45</sup>

**B. Colstrip Pro Forma Adjustment Should be Modified to Exclude 2022 Dry Ash Removal Costs and to Reflect Actual 2020-21 Capital Additions**

**1. 2020 and 2021 actual figures should be used as opposed to Avista's inflated estimates**

22. Avista's proposed revenue requirement includes a pro forma adjustment for Colstrip capital addition costs for the years 2020, 2021 and 2022. For the year 2020, Avista proposed \$10 million in costs in its opening testimony before the actual numbers were fully available, and the figure was eventually reduced to \$5.2 million, just 52% of the \$10 million that Avista projected in direct testimony.<sup>46</sup> Sierra Club recommends that costs are adjusted to reflect actual capital additions for 2020, consistent with Avista's Supplemental Response to Staff DR 107.

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<sup>43</sup> *Id.* at 10:9-10.

<sup>44</sup> *Id.* at 17:13-16.

<sup>45</sup> Policy Statement on Property That Becomes Used and Useful After Rate Effective Date, *supra* note 10, at 9 n.24.

<sup>46</sup> Burgess, Exh. EB-1CT at 25:10-14.

23. For the 2021 capital additions, Avista seeks: (1) ongoing capital costs for Units 3 and 4, including an overhaul of Unit 3, and (2) new capital costs in a major new dry ash waste disposal system. Avista estimated these costs to be \$8.1 million in opening testimony and now this figure is down to \$3.8 million total, or a \$2.5 million share for Washington customers, which is just 47% of Avista’s initial projection.<sup>47</sup> The Unit 3 2021 overhaul costs could instead be treated as a one-time fixed O&M expense, as a reduced incentive for Avista to pursue unneeded life-extending capital investments at Colstrip. Though it may cause a larger short-term rate increase of 0.50% the first year and 0.21% after that, the Commission should consider this concept.<sup>48</sup> Although Sierra Club supports some 2020-21 recovery, the 2022 capital expenses should not be included at this juncture as discussed below.

**2. The 2022 dry ash expenses are not known and measurable, and should not be included in this rate case**

24. Dry ash waste containment expenses<sup>49</sup> do not meet the Commission’s standard to recover capital investment costs because such costs must be “known and measurable costs.”<sup>50</sup> Avista has given dry ash number *budget projections* that are all over the map without sufficient explanation. Further it is also unclear whether the dry ash disposal costs will ever be “used and useful” for Washington ratepayers, or whether such a dry ash

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<sup>47</sup> *Id.* at 26:7-12 (citing Staff DR 107 Supplemental 2 - Attachment D revised).

<sup>48</sup> *Id.* at 29:17-22.

<sup>49</sup> The Dry Ash Waste Disposal Agreement was the result of litigation between Sierra Club, Montana Environmental Information Center (“MEIC”) and National Wildlife Federation (“NWF”) and the Colstrip co-owners that currently has a mid-2022 deadline. *See* Gomez, Exh. DCG-6.

<sup>50</sup> Policy Statement on Property That Becomes Used and Useful After Rate Effective Date, *supra* note 10, para. 41 (emphasis added).

system meets Avista’s obligation to not extend the life of Colstrip beyond December 31, 2025.<sup>51</sup>

- i. Dry ash expenses have ballooned throughout this case, and are still not final numbers therefore failing to meet the Commission’s standard for “known and measurable” costs*

25. The dry ash costs have been stated inconsistently in this case and have gone up dramatically with little explanation. In opening testimony, Mr. Thackston states that the cost for the dry ash waste disposal facility is approximately \$16 million.<sup>52</sup> In response to Sierra Club discovery, Avista estimates capital costs to be [REDACTED].<sup>53</sup> Then in response to staff discovery, dry ash costs are then stated as \$37.9 million.<sup>54</sup> And on rebuttal, Mr. Thackston then states the costs are \$39.9 million.<sup>55</sup> These are not rounding errors; the costs are tens of millions of dollars apart, and do not meet the standard for known and measurable.

26. Even with these vacillating—and escalating—figures, Avista continues to build in wiggle room to say that the dry ash costs could continue to rise. Mr. Thackston avers that the dry ash waste disposal system is the “first of its kind.”<sup>56</sup> Mr. Thackston further states in rebuttal testimony that “[o]ther issues may still arise that could cause the project estimate to increase as the project is executed.”<sup>57</sup> This contrasts with Thackston’s other

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<sup>51</sup> *Id.* at 12.

<sup>52</sup> Thackston, Exh. JRT-1T at 106:12-15.

<sup>53</sup> Burgess, Exh. EB-1CT at 30:9-13 (citing SC DR 011C—Confidential Attachment B, EHB Design Build Dry Waste Disposal System).

<sup>54</sup> *Id.* at 30:9-13 (citing Staff DR 107 Supplemental 2—3.19 Attachment D Revised).

<sup>55</sup> Thackston, Exh. JRT-12T at 37:1-2.

<sup>56</sup> *Id.* at 32:22-23.

<sup>57</sup> *Id.* at 33:14-15.

rebuttal testimony that states that the dry ash disposal system has a “firm project budget.”<sup>58</sup>

27. The Commission should decline to include any 2022 dry ash costs in rates. Washington’s share of the 2022 capital additions initially were proposed at \$3.4 million and then increased to \$5.1 million, all of which appear to be linked to Avista’s portion of the unapproved Design/Build costs of a Dry Ash Waste Disposal System.<sup>59</sup> Now, on rebuttal, Mr. Thackston claims Avista’s share is \$6 million.<sup>60</sup> Given Avista’s history of vastly overestimating costs, the Commission should be particularly skeptical about allowing recovery of such large numbers so far into the future.
28. The 2022 costs can be handled when (or if) the costs become known and measurable in a future general rate case. These dry ash costs, as currently stated, do not meet the standard for costs that are “known and measurable” because the numbers are based on budget projections or forecasts that seem to be ever-changing as opposed to actual expenditures.<sup>61</sup> The Commission should deny recovery at this juncture. The cost here is too significant to determine prudence based on the very little information Avista has given.<sup>62</sup> And early stage costs like steel contracts should be refundable to customers if the Commission determines they were incurred imprudently.<sup>63</sup>

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<sup>58</sup> *Id.* at 37:8-9.

<sup>59</sup> Burgess, Exh. EB-1CT at 30:1-6.

<sup>60</sup> Thackston, Exh. JRT-12T at 30:12-14.

<sup>61</sup> Policy Statement on Property That Becomes Used and Useful After Rate Effective Date, *supra* note 10, at 9.

<sup>62</sup> Burgess, Exh. EB-1CT at 31:1-7.

<sup>63</sup> *Id.* at 28:8-15.

ii. *A dry ash waste disposal system may not be used and useful to Washington ratepayers*

29. A great deal of uncertainty regarding the future of Colstrip and Avista’s ultimate exit date exists. While the Clean Energy Transformation Act (“CETA”) mandates that Washington utilities exit by December 31, 2025, the Colstrip co-owners are currently or will be engaging in arbitration soon that pertains to issues surrounding closure.<sup>64</sup> Several pieces of legislation passed in Montana in the spring of 2021 and litigation surrounding that legislation adds to the overall uncertainty about Colstrip’s future.<sup>65</sup> One of the possible outcomes from this litigation or arbitration could be an earlier shutdown to one or both of the Colstrip units. Avista’s 2020 IRP states that the most economic decision is to exit Colstrip units 3 and 4 by 2025 or sooner.<sup>66</sup> And Avista has reiterated in its 2021 Integrated Resource Plan (“IRP”) that its most economic decision would be to exit both Units 3 and 4 as soon as possible.<sup>67</sup>

30. An earlier shutdown for both Units 3 and 4 of Colstrip would negate the need for any dry ash waste disposal system through source control, and a partial shutdown of one of the units could reduce the scale, and cost, of a dry ash waste disposal system. Avista contends that a dry ash waste disposal system is a known cost because it must be completed by the middle of 2022 under a settlement agreement.<sup>68</sup> Sierra Club and other parties to the dry ash settlement reached out to the Colstrip co-owners to discuss a

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<sup>64</sup> Gomez, Exh. DCG-1CT at 20:1-7.

<sup>65</sup> *Id.* at 32-34 (summarizing pending MT legislation, arbitration and risks). *See also* Gomez, Exh. DCG-14 (showing co-owner fights over operating budgets).

<sup>66</sup> Thackston, Exh. JRT-1T at 44:25-25:3.

<sup>67</sup> Gomez, Exh. DCG-13 at 2.

<sup>68</sup> Gomez, Exh. DCG-6 and Gomez, Exh. DCG-1CT, at 13 n.20 (citing DCG-6 § 2(A)(ii) which allows for flexibility in the Dry Ash Conversion dates).

potential extension of that deadline.<sup>69</sup> The result of those discussions was a promise to follow up and keep talking, not a wholesale rejection of the premise by either side. The dry ash facility's deadline could be extended and/or part or all of Colstrip could shut down and change the size and scope of the dry ash facility, or its need altogether.

31. If Colstrip shuts down or the timeline for the dry ash facility construction is delayed, the facility could be constructed beyond the December 31, 2025 Washington utilities' departure date, and never become used and useful for Avista's Washington ratepayers.

*iii. A dry ash waste disposal unit will extend the life of Colstrip Units 3 and 4 beyond December 31, 2025*

32. In the 2019 GRC settlement, Avista promised not to support capital expenditures beyond routine maintenance costs that would extend the life of Colstrip beyond December 31, 2025.<sup>70</sup> The investment in a dry ash containment system is a major capital investment that will outlast the December 31, 2025 date of Washington's Colstrip exit. A new dry ash disposal facility will enable Colstrip to continue its operations beyond that timeframe and thus does not meet the goal outlined in the last rate case, especially when parties to the settlement agreement are willing to discuss a potential deadline extension.

### **III. CONCLUSION**

33. For the above-stated reasons, the Commission should disallow Avista's entire claim for \$2.74 million in SmartBurn costs that were imprudently incurred. The Colstrip Pro Former adjustment should exclude Avista's ever-changing \$6 million share of 2022

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<sup>69</sup> Burgess, Exh. EB-1CT at 31:11-16; *See also* Gomez, Exh. DCG-29.

<sup>70</sup> 2019 Avista Order, *supra* note 7, para. 51.

dry ash waste containment expenses at this juncture, leaving these costs to be evaluated in the next general rate case.

Respectfully submitted,

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