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, UE-200894 (*Consolidated*)
In the Matter of the Petition of AVISTA CORPORATION d/b/a AVISTA UTILITIES, For an Accounting Order Authorizing Accounting and Ratemaking Treatment of Costs Associated with the Wildfire Resiliency Plan	

POST-HEARING BRIEF OF COMMISSION STAFF
CONFIDENTIAL

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I. INTRODUCTION

1 Avista Corporation ("Avista" or "Company") has failed to demonstrate that it requires anywhere near the $28.5 million increase in revenue requested for electric service[1] or the $10.7 million it requests in additional revenue for natural gas service.[2] Instead, the evidence that the Staff of the Washington Utilities and Transportation Commission (Commission) presents supports a *decrease* of $1.1 million in Avista's electric service revenue requirement[3] and a modest revenue increase of $6.1 million for natural gas service.[4] This evidence includes Commission Staff's (Staff's) cost of capital analysis, its review of Avista's proposals concerning wildfire costs, and its in-depth investigation of costs associated with the coal-fired generating plant in Colstrip, Montana, among other issues. Notably, Staff has sorted through the Company's confusing presentation of capital additions and elucidates the necessary principles to apply to these proposed costs to reach a reasonable result.

II. GENERAL RATEMAKING PRINCIPLES

2 This Commission must establish rates that are fair, just, reasonable, and sufficient.[5] Avista bears the burden of proving that its proposed rates meet that standard.[6]

3 The Commission sets utility rates based on a revenue requirement calculated from prudently incurred costs, investment prudently made in used and useful plant, and a return on that plant investment.[7] The utility's results of operations during a historic test year provide the

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[1] *See* Andrews, revised Exh. EMA-8, filed July 29, 2021, as an attachment to Avista's 60-Day Power Supply Update.
[2] *See* Andrews, Exh. EMA-9.
[3] The electric revenue requirement decrease is based on Huang, Exh. JH-2r, with the incorporation of Avista's July 30th power supply update.
[4] Huang, Exh. JH-3r at 2.
[5] RCW 80.28.020; *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-160228 & UG-160229, Order 06, 45–46, ¶ 79 (Dec. 15, 2016) (2016 Avista GRC Order) (explaining the fair, just, reasonable, and sufficient standard).
[6] RCW 80.04.130(4).
[7] *People's Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm'n*, 104 Wn.2d 798, 808-10, 711 P.2d 319 (1985) (*POWER*); *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 309, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989).

foundation of this revenue requirement because costs are auditable and the relationships among costs, revenues, and other facets of utility operations are established and matched.[8]

4 The Commission may allow modification of the utility's test-year results through restating and pro forma adjustments.[9] Restating adjustments correct for "defects or infirmities in actual record test year results of operations that can distort test period earnings."[10] Pro forma adjustments "give effect for the test period to all known and measurable changes that are not offset by other factors."[11] A known change involves an event occurring before or during the rate year and whose impact is in place during the rate year.[12] A measurable change involves concrete dollar amounts, not "an estimate, a projection, the product of a budget forecast, or some similar exercise in judgment–even informed judgment–concerning future revenue, expense[,] or rate base."[13] Offsetting factors "'cancel out' or at least mitigate the impact of a known and measurable change increase" in rate base or expenses,[14] whether the offset is produced directly by the known and measurable event or indirectly by other aspects of utility operations.[15]

5 As noted, the Commission will not include in the revenue requirement any imprudent cost or investment. The utility bears the burden of showing that it acted prudently throughout the lifecycle of a cost or investment.[16] The Commission reviews the prudence of such costs or investments by evaluating what "a reasonable board of directors and company management"

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[8] 2016 Avista GRC Order at 47, ¶ 80.
[9] WAC 480-07-510(3)(c).
[10] WAC 480-07-510(3)(c)(i).
[11] WAC 480-07-510(3)(c)(ii).
[12] *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-090134 & UG-090135 & UG-060518, Order 10, 21, ¶ 45 (Dec. 22, 2009) (2009 Avista GRC Order).
[13] 2009 Avista GRC Order at 21, ¶ 45.
[14] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-909705, Order 11, 12, ¶ 27 (Apr. 2, 2010) (2009 PSE GRC Order).
[15] 2009 PSE GRC Order at 12, ¶ 28.
[16] *Wash. Utils. & Transp. Comm'n v. Cascade Nat. Gas Corp.*, Docket UG-200568, Order 05, 85, ¶ 284 (May 18, 2021) (2020 Cascade GRC Order).

would have done "given what they knew or reasonably should have known to be true at the time they made a decision."[17] This test applies both to the question of need and the appropriateness of the expenditure.[18] To do so, the Commission must "determine what information was known or reasonably should have been known, when it was known, and how it was considered in the decision."[19]

III. RATE OF RETURN

6 The Commission should authorize a modest reduction in Avista's authorized return on equity to 9.30 percent, maintain the current capital structure with a 48.50 percent equity ratio, and approve the cost of debt at 4.97 percent. Avista requests a rate of return (ROR) of 7.42 percent including a cost of equity (ROE) at 9.90 percent,[20] and a capital structure of 50 percent equity and 50 percent long-term debt.[21] Staff ROE witness Parcell recommends an ROE of 9.30 percent, with a recommended ROE range of 9.50 to 9.10 percent.[22] He also recommends a capital structure with 48.50 percent equity, 49.02 percent long-term debt, and 2.48 percent short-term debt.[23] In the Company's last general rate case (GRC), the parties reached an approved settlement that included a 9.40 percent ROE, and a capital structure with 48.50 percent equity/51.50 percent debt.[24] The overall ROR from that settlement was 7.21 percent.[25]

7 In this case, Avista's requested ROE is far higher than any ROE authorized by the

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[17] *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause No. 83-54, 4th Suppl. Order, 32 (Sept. 28, 1984).
[18] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 14, 34, ¶ 65 (May 13, 2004) (citation omitted).
[19] *In re Investigation of Avista Corp., Puget Sound Energy, & Pac. Power & Light Co. Regarding Prudency of Outage and Replacement Power Costs*, Docket UE-190882, Order 05, 12, ¶ 42 (Mar. 2, 2020) (Colstrip Outage Investigation Order).
[20] Thies, Exh. MTT-1T at 17:16-21.
[21] *Id*. at 17:10-12.
[22] Parcell, Exh. DCP-1T at 5:4-10.
[23] Parcell, Exh. DCP-3.
[24] 2019 Avista GRC Order at 13, ¶ 34, Table 1.
[25] *Id*.

Commission in recent years. The record does not demonstrate that Avista needs an ROE dramatically higher than its Commission-regulated peers, and most of the arguments Avista presents are the same arguments raised by the Company in its 2017 GRC. Based on the evidence presented by all ROE witnesses and the Commission's cost of capital policies, Avista should in fact receive a slight reduction in ROE. Further, the Company provided no legitimate reason to deviate from its currently authorized capital structure. Avista reaches a 50/50 hypothetical capital structure by removing short-term debt. The same proposal was rejected by the Commission in Avista's 2017 GRC, and again, the Company makes essentially the same capital structure arguments in this case that it did in the 2017 GRC. Finally, The Commission should disregard Avista's arguments on cost of capital and credit ratings because they lack sufficient detail and evidentiary support.

A. Legal Standard

8 A utility's cost of capital is the level of return it requires to service its debt and compensate its equity investors. The Commission calculates a utility's cost of capital, or rate of return, in keeping with the principles established in the *Hope*[26] and *Bluefield*[27] line of cases. To calculate a utility's cost of capital, the Commission must determine the cost of debt, the cost of equity, and the utility's capital structure. A utility's rate of return (also known as the weighted cost of capital) is the sum of its cost of debt and its cost of equity, weighted according to the respective shares of debt and equity in the utility's capital structure.

9 The cost of debt is typically computed based on the actual debt and cost rates of debt the utility has issued. In contrast, the cost of equity is an estimate of the likely return an investor

[26] *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944).
[27] *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).

would require to invest in an enterprise with comparable risks.[28] To determine the return on equity, the Commission first identifies the range of possible returns reported by expert witnesses, and narrows that to a range of reasonable returns.[29] The Commission selects a specific ROE by weighing the results falling within that range and considering any other relevant evidence.[30]

10 The capital structure used to calculate the rate of return may be a company's actual capital structure or a hypothetical capital structure.[31] The important principal is that the capital structure that the Commission uses for setting rates must balance the "economy" of lower cost debt with the "safety" of higher cost common equity.[32]

B. Avista Asks For A Return On Equity Significantly Above What It Can Reasonably Expect

11 Avista's requested ROE is significantly above what the Company can reasonably expect to receive based on the outcomes of recent GRCs, the Commission's policy of gradualism, and the evidence presented by all the ROE witnesses in this case. First, no recent case, whether contested or settled, has resulted in an authorized ROE close to the 9.90 percent recommended by Avista. On May 18, 2021, the Commission entered a final order in the 2020 Cascade Natural Gas Corporation (Cascade) GRC.[33] In that case, the Commission authorized a 9.40 percent ROE,[34] and maintained the company's previously authorized capital structure.[35] On July 20, 2020, the Commission issued a final order in the 2019 Puget Sound Energy (PSE) GRC,

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[28] *See Hope*, 320 U.S. at 602; *Bluefield*, 262 U.S. at 692.
[29] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy,* Dockets UE-170033 & UG-170034, Order 08, 32, ¶ 90 (Dec. 5, 2017) (2017 PSE GRC Order).
[30] *Id*.
[31] *Wash. Utils. & Transp. Comm'n v. Avista Corp*., Dockets UE-170485, UG-170486, & UE-171222, Order 07, 39, ¶ 109 (Apr. 26, 2018) (2017 Avista GRC Order); *see also Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-040640 & UG-040641, Order 06, 13, ¶ 27 (Feb. 18, 2005) (2004 PSE GRC Order).
[32] 2004 PSE GRC Order at 13, ¶ 27.
[33] 2020 Cascade GRC Order.
[34] *Id*. at 6, ¶ 15.
[35] *Id*. at 21, ¶ 77.

authorizing a 9.40 percent ROE and maintaining PSE's current capital structure.[36]

12 The Commission approved a settlement in Avista's last GRC, setting ROE at 9.40 percent and maintaining the previous capital structure.[37] In February of 2020, the Commission approved a settlement of the 2019 Cascade GRC, which included a 9.40 percent ROE.[38] In December of 2020, the Commission approved a settlement in the 2019 PacifiCorp GRC that included a 9.50 percent ROE, but this term was part of a larger settlement that included both a multiyear rate plan and an overall rate reduction.[39] In October of 2019, the Commission approved a settlement for Northwest Natural Gas Company that also included a 9.40 percent ROE.[40]

13 Obviously, the Commission decides cost of capital on a case-by-case basis according to the record in each case. But these decisions are, at least in part, based on market conditions experienced by all of the electric and natural gas IOUs regulated by the Commission. Avista's implied assertion—that it is somehow uniquely situated among its peers, such that a 50-basis point increase in ROE is justified—invites immediate skepticism. Yet even if Avista was able to articulate a unique need for an increased ROE, Avista's request for such a substantial increase would conflict with the Commission's principle of gradualism.[41]

14 In the 2019 PSE GRC, although the Commission found that the totality of the evidence presented indicated a 30-basis point reduction in the company's ROE would be appropriate, it

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[36] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991, & UG-190992, Order 05, 2 (July 8, 2020) (2019 PSE GRC Order).
[37] 2019 Avista GRC Order at 13, ¶ 34.
[38] *Wash. Utils. & Transp. Comm'n v. Cascade Nat. Gas Corp.*, Docket UG-190210, Order 05, 3, ¶ 10 (Feb. 3, 2020) (2019 Cascade GRC Order).
[39] *See generally Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Dockets UE-191024, UE-190750, UE-190929, UE-190981, & UE-180778, Order 09/07/12 (Dec. 14, 2020) (2019 PacifiCorp GRC Order).
[40] *Wash. Utils. & Transp. Comm'n v. Nw. Nat. Gas Co.*, Docket UG-181053, Order 06, 20, ¶ 51 (Oct. 21, 2019) (2018 NW Natural GRC Order).
[41] *See* 2020 Cascade GRC Order at 35, ¶ 123.

declined to adopt such a steep reduction, based on the principle of gradualism.[42] The principle of gradualism provides stability for both the utility and its ratepayers by mitigating what would otherwise be dramatic changes in approved ROE, even if the totality of the evidence in the record indicates such an adjustment would accurately reflect the cost of attracting investors. Of course, gradualism is not a one-way street. Just as the Commission mitigated the reduction to ROE in the 2019 PSE GRC, it would also mitigate any dramatic increase in ROE based on the principle of gradualism. The record in this case does not suggest that an increase is justified; this point simply illustrates yet another defect in Avista's ROE recommendation.

15 The record supports a modest reduction in Avista's ROE to 9.30 percent. As discussed in the legal standard section above, the Commission evaluates ROE by first taking the range of possible returns reported by ROE witnesses and narrowing that to a range of reasonable returns.[43] The total of all reported Discounted Cash Flow (DCF) results range from 9.40 to 8.70 percent, a 70-basis point spread.[44] The possible Capital Asset Pricing Model (CAPM) range is 440 basis points, from 11.80 to 7.40 percent.[45] Risk Premium (RP) was employed by two ROE witnesses, resulting in a total range from 10.10 to 8.40 percent, a 170-basis point spread with an overall midpoint of 9.25 percent.[46] The overall range of possible returns is the same as the CAPM range, from 11.80 to 7.40 percent. Given this wide range, narrowing to a reasonable range will require setting aside some extreme results, and relying on results that produce a narrower range.

16 Historically, the Commission has afforded the DCF methodology results material weight,

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[42] 2019 PSE GRC Order at 35, ¶ 105.
[43] 2017 PSE GRC Order at 32, ¶ 90.
[44] McKenzie, Exh. AMM-4; Parcell, Exh. DCP-1T at 2:17-24; 5:1-4, *see also* Parcell, Exh. DCP-3; Woolridge, Exh. JRW-1Tr at 44:4, Table 3.
[45] McKenzie, Exh. AMM-4; Parcell, Exh. DCP-1T at 5:1-4; Woolridge, Exh. JRW-1Tr at 58:11, Table 7.
[46] McKenzie, Exh. AMM-4; Parcell, Exh. DCP-1T at 5:1-4.

including in the Avista 2017 GRC.[47] In that case, the Commission afforded more weight to the DCF results and less weight to CAPM results due to the wide range of reported CAPM results.[48] Here, the spread between CAPM results is even wider than the results reported in the 2017 GRC. Therefore, Commission should weigh the DCF and CAPM results in this case much like it did in the 2017 GRC. Note also that Staff witness Parcell did not use his CAPM results when formulating his overall recommended range.[49]

17 Given all the results reported by the ROE witnesses, the Commission should set aside the CAPM and Expected Earning (EE) results to determine a reasonable range. Like in the 2017 Avista GRC, the CAPM results in this case are too wide to give a meaningful ROE range. The results of the EE methodology from Company witness McKenzie should also be set aside. Even the lower end of those results (10.30 percent) is above the high end of any other non-CAPM range. The low end of the EE range is also 90-basis points higher than the Company's currently authorized ROE. Removing both CAPM and EE results gives an overall range from 10.10 to 8.10 percent. Avista's currently authorized ROE of 9.40 percent is at the high end of the overall DCF range. Giving more weight to the DCF results, but accounting for the results of the RP and Comparable Earnings (CE) methods, a slight reduction in ROE to 9.30 percent is appropriate. An ROE of 9.30 percent would be within the high end of the DCF results, above the midpoint of the RP results (9.25 percent), and below the midpoint of the CE results (9.50 percent), yet still well within the CE range of 10.00 to 9.00 percent. This is a reasonable and fair result that is compatible with the principle of gradualism.

[47] 2017 Avista GRC Order at 26, ¶ 62.
[48] *Id*. at 26–27, ¶ 63.
[49] Parcell, Exh. DCP-1T at 5:8-10.

C. Avista Provides No Legitimate Reason For The Commission To Alter Its Current Capital Structure

18 The Commission should maintain Avista's current capital structure because nothing has changed since Avista's last contested GRC that would justify an adjustment. In the 2017 Avista GRC, the Company requested a capital structure comprised of 50 percent equity and 50 percent debt.[50] Both in the current GRC and in the 2017 GRC, Avista reached this recommended hypothetical capital structure by excluding short-term debt from the capital structure.[51] The Commission denied Avista's request in the 2017 GRC, stating that the Company "failed to justify a material change to its currently authorized capital structure."[52] In part, the Commission's decision was due to the Company's actual equity ratio being closer to 48.50 percent than the 50 percent proposed by the Company.[53] The Commission rejected Avista's proposal to exclude short-term debt from the capital structure.[54]

19 Nothing since that decision has changed that would justify the Company's ongoing request for a 50/50 capital structure that excludes short-term debt. Avista's actual capital structure remains close to its currently authorized 48.50 percent equity ratio at 46.57 percent.[55] On rebuttal, Avista argues that the proposed capital structure is justified based on the authorized capital structures that the Company received in other jurisdictions,[56] the common equity ratios of the proxy groups employed by Staff witness Parcell and Company witness McKenzie,[57] cash flow constraints,[58] and finally, Avista's "ongoing efforts to strengthen its credit standing and

[50] 2017 Avista GRC Order at 35, ¶ 93.
[51] *Id.*; Thies, Exh. MTT-1T at 17:13-14.
[52] 2017 Avista GRC Order at 39, ¶ 109.
[53] *Id*. at 39, ¶ 107.
[54] *Id*. at 39–40, ¶ 111, Table 2.
[55] Woolridge, Exh. JRW-5 at 1, Panel B.
[56] Thies, Exh. MTT-T6 at 8:9-10.
[57] *Id*. at 10:1-4.
[58] *Id.* at 10:6-9.

support access to capital on reasonable terms."[59]

20 First, the cost of capital decisions made by other jurisdictions in which Avista operates do not dictate the Commission's decision and traditionally are not even persuasive. Second, the capital structure of the proxy groups used in ROE analysis has little to no relevance because the Commission determines capital structure by first considering a utility's actual capital structure as the default, then it considers whether the record demonstrates that certain circumstances (including but not limited to, financial hardship or tight market conditions) exist that would justify authorizing a hypothetical capital structure.[60] As for the Company's desire to strengthen its credit standing, Avista has provided insufficient evidence to support those arguments, as discussed below.

D. Avista's Credit Ratings Arguments Are Not Supported By Evidence And Should Be Ignored

21 Utilities often argue in general rate cases that the Commission's decision on cost of capital could, for better or worse, result in a change in the utility's credit ratings. While that general statement is undoubtedly true, any party that would like the Commission to seriously consider these types of arguments should provide more evidence to support its specific claim. While the Commission has not established a specific standard for this type of claim, it clearly does not find the vague assertion that an increase in ROR might lead to improved credit ratings sufficient. In the 2017 Avista GRC, the Commission stated, with respect to Avista's credit ratings arguments, that "[w]hile we understand that an increase to the equity component of the company's authorized capital structure could potentially lower costs to access capital, and solidify further Avista's existing credit ratings, we are not persuaded that an increase in the

[59] *Id*. at 10:8-9.
[60] 2017 Avista GRC Order at 39, ¶ 110.

equity level as proposed by the Company is currently necessary."[61]

22 Staff understands that no party can guarantee that a change in cost of capital or ROE would result in a credit rating upgrade or downgrade. However, any party making this type of argument should at least present evidence sufficient to support two assertions: first, that the proposed ROE would make a change in credit ratings at least *probable*, and second, that this change in credit rating would ultimately benefit ratepayers and the utility *as a whole*.[62] Based on Avista's response at the evidentiary hearing to bench questions related to the effect of accelerating the return of tax benefits on credit ratings,[63] the Company does not appear confident that it can determine the probability of a given Commission decision resulting in a change in credit ratings with any precision.[64] If the same uncertainty exists in the cost of capital context, then Avista's claim regarding the impact on credit ratings is merely speculative. In any event, the Commission would need more evidence and analysis than what is in the record to even evaluate the claim.

IV. PRO FORMA CAPITAL ADDITIONS

23 Avista seeks to pro form into rates more than 60 capital projects completed or scheduled for completion after the test year.[65] Staff recommends that the Commission exclude from the rates it sets here projects that Avista includes in its Adjustments 3.11–3.15 that: (1) fail to meet a

[61] 2017 Avista GRC Order at 39, ¶ 109.
[62] This second requirement is merely a restatement of the public interest standard in this specific context. An improved credit rating is not a good in and of itself, the potential savings from a lowered cost of debt must be balanced against the increased cost to ratepayers from the requested increase in ROE.
[63] Thies, TR 234:10-243:1.
[64] *Id*. at 242:3-25.
[65] Schultz, Exh. KJS-3T at 15 n.24.

reasonable definition of major,[66] (2) fail to account for offsetting factors,[67] (3) fail to qualify as programmatic pro forma adjustments,[68] or (4) fail more than one of those standards.[69]

24 The Commission may value for ratemaking purposes property placed into service after the test year, but before the rate effective date, if the utility shows that: (1) it prudently invested in the plant,[70] (2) the plant is used and useful for the provision of service in Washington,[71] (3) the investment involves a known and measurable rate impact,[72] (4) it accounted for offsetting factors,[73] and (5) the investment meets "some reasonable definition of major."[74] The Commission may also provisionally value property placed into service after the rate-effect date,[75] with that valuation subject to refund after the Commission reviews the investment applying the standards just discussed retrospectively.[76]

A. The Commission Should Exclude Non-Major Projects From The Rates Set In This Case

25 As noted, the Commission requires that the projects involved in any pro forma adjustment "meet some reasonable definition of major." Avista and Staff contest whether this major project standard should define the Company's ability to pro form projects into rates and whether the Commission should accept Staffs definition of a major project. The answer to both of those questions is yes.

[66] Higby, Exh. ANH-1T at 20:9-10; 20–21, Table 3 (tables showing the projects meeting Staff's major project thresholds).
[67] Higby, Exh. ANH-1T at 31:6-7; 31–32, Table 5 (tables showing the projects that do not account for offsetting factors).
[68] Higby, Exh. ANH-1T at 35:10-14 (identifying blanket programs inappropriate for pro forma treatment).
[69] *E.g.*, Higby, Exh. ANH-1T at 36:15-18.
[70] *Barasch*, 488 U.S. at 309.
[71] RCW 80.04.250(2).
[72] 2020 Cascade GRC Order at 85, ¶ 284.
[73] 2020 Cascade GRC Order at 85, ¶ 284.
[74] 2020 Cascade GRC Order at 85, ¶ 284; 2017 Avista GRC Order at 66, ¶ 196.
[75] *In re the Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful After Rate Effective Date, 10, ¶¶ 27–29 (Jan. 31, 2020) (Used and Useful Policy Statement).
[76] RCW 80.04.250(3); Used and Useful Policy Statement at 10, ¶¶ 27–29.

26 Initially, Avista contends that the major project standard should define what the parties audit, not what the Commission values for rate inclusion as a pro forma adjustment.[77] The Commission should reject that argument, for three reasons.

27 First, this Commission has consistently, if implicitly, rejected this argument for over forty years. It has always applied the major project standard as defining eligibility for rate inclusion.[78] It does so to balance the interests of the parties—the major project standard allows the utility to recover through pro forma adjustments investments material to its bottom line but prevents the utility from overburdening the other parties' ability to review the projects underlying the pro forma adjustments.[79]

28 Second, Avista fundamentally misunderstands the role of the Commission and the parties here. Neither the Commission nor the parties are members of the "industry" or some kind of outside accounting firm to which "standard accounting practices employed elsewhere" apply.[80] The Commission is Avista's regulator.[81] The parties review Avista's projects to provide recommendations intended to assist the Commission in setting fair, just, reasonable, and sufficient rates.[82] The parties' review ensures that the projects underlying pro forma plant adjustments involve prudent investment and used and useful plant, and that the adjustments produce rates that reflect Avista's cost of service based on concrete expenditures offset by any

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[77] Andrews, Exh. EMA-6T at 25:1-26:13.
[78] *E.g.*, 2017 Avista GRC at 67, ¶¶ 198–99 (rejecting Avista's attempts to include in rates numerous small projects); *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause No. U-78-21, 1979 Wash. UTC Lexis at 5, *26 (Mar. 8, 1979) (noting that the Commission could allow "upward or downward pro forma adjustments to rate base to reflect out-of-period events affecting major generating or transmission facilities").
[79] 2017 Avista GRC at 67, ¶ 198; *cf.* 2020 Cascade GRC Order at 86, ¶¶ 286–87.
[80] Andrews, Exh. EMA-6T at 24:7-8; 25:10-13; Christie, Exh. KJC-1T at 14:3-7.
[81] RCW 80.28.020; *see* RCW 80.28.010.
[82] RCW 80.28.020, *see* RCW 80.28.010; *cf.* 2020 Cascade GRC Order at 93, ¶ 306 (the Commission benefits from the parties' audits of utility plant).

cost reductions created by those expenditures.[83] Sampling does not provide the Commission with the certainty required for setting rates under the public service laws.

29 Third, Avista's major project framework creates intractable chicken and egg problems. Avista appears to contend that the parties need not review every project, because they can always audit a project in depth if they have concerns.[84] But Avista does not explain how parties could have concerns about a project without first reviewing it, and Staff sees no way out of that quandary.

30 Avista next disputes Staff's definition of a major project, offering a version of its own for the Commission's approval. Because each party bears the burden of supporting its definition of major,[85] and because only Staff carries its burden, the Commission should reject Avista's and accept Staff's.

31 Staff defined major projects as those involving monetary amounts greater that 0.25 percent of test-year net plant in service, or roughly $4.1 million for electric operations and $0.9 million for gas.[86] Staff did not apply the major project standard as a bright-line, exempting from its application, for example, information technology projects given the unique challenges their short lives pose to Avista's recovery.[87]

32 The Commission should accept this definition of a major project, which is supported by testimony and Commission precedent.[88] Staff appropriately defined "major" relative to Avista's size,[89] and did so in a way more favorable to Avista than previous definitions accepted by the

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[83] *Wash. Utils. & Transp. Comm'n v. Puget Sound Pilots*, Docket TP-190976, Order 09, 9, ¶ 34; 15, ¶ 54 (Nov. 25, 2020) (the Commission engages in cost-of-service ratemaking).
[84] *E.g.*, Christie, Exh. KJC-1T at 13:12-14.
[85] 2020 Cascade GRC Order at 89, ¶ 294.
[86] Higby, Exh. ANH-1T at 18:6-9.
[87] Higby, Exh. ANH-1T at 17:9-18:3; *see* 2019 PSE GRC Order at 163, ¶ 560.
[88] Higby, Exh. ANH-1T at 12:1-20:8.
[89] *See Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-150204 & UG-150205, Order 05, 17, ¶ 40 (Jan. 6, 2016) (2015 Avista GRC Order).

Commission.[90] Staff did not apply the definition as a bright line, exempting projects whose nature posed significant threats to Avista's recovery of its investments.[91] Staff thus struck exactly the kind of reasoned balance between Avista's and the parties' interests that the Commission strives for in applying the major project standard.[92]

33 Avista nevertheless requests that the Commission reject Staff's major project threshold as "arbitrary."[93] The Commission should find this argument meritless, for one of two alternate reasons. If Avista means that using *any* definition of major projects to limit the number of projects it can pro form into rates is arbitrary, and that is how its argument reads,[94] the Commission has implicitly rejected that for forty years,[95] and has recently explicitly rejected it.[96] If Avista means that Staff's particular version of the major project standard is arbitrary, baldly making and repeating that assertion without explanation or elaboration does not make it so.[97] Staff justified its definition with the reasoned application of Commission precedent.[98] It was definitionally not arbitrary.

34 Avista, for its part, refuses to define a major project for purposes of pro forma adjustments.[99] Instead, it effectively applied what might be termed a "minor project" standard,

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[90] Higby, Exh. ANH-1T at 13:13-14:2; 18:5-19:8.
[91] Higby, Exh. ANH-1T at 17:11-18:3.
[92] Staff notes that Avista did little to minimize the burden of review on the parties. Its pro forma adjustments are a byzantine maze of expenditure requests, budgeted items, and business cases, Higby, Exh. ANH-1T at 7:9-8:2, with various plans overlapping in the background. Rosentrater & Diluciano, TR. 154:17-159:13 (Commissioner Rendahl and Chair Danner discussing the difficulty in following the interaction of Avista's plans with its business cases). Avista split testimony about plant additions among numerous witnesses, Andrews, Exh. EMA-1T at 21:11-22:1. And Avista's testimony frequently duplicates itself, with, for example, some witnesses providing the same answer, word for word. *E.g.*, *compare* Andrews, Exh. EMA-6T at 24:6-20 *with* Christie, Exh. KJC-1T at 14:11-15:7. Avista notes the significant discovery the parties needed to engage in concerning its pro forma plant rate requests. Andrews, Exh. EMA-6T at 17:12-14. Its presentation of its case in no small part explains that need.
[93] Schultz, Exh. KJS-3T at 13:2-6; Andrews, Exh. EMA-6T at 16:12-14; Christie, Exh. KJC-1T at 17:11-14.
[94] Schultz, Exh. KJS-3T at 13:2-6; Andrews, Exh. EMA-6T at 16:12-14; Christie, Exh. KJC-1T at 17:11-14.
[95] *See e.g.*, *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co.*, Cause No. U-78-21, 1979 Wash. UTC Lexis 5, *26 (Mar. 8, 1979).
[96] 2020 Cascade GRC Order at 85, ¶ 284; 95, ¶ 313.
[97] Schultz, Exh. KJS-3T at 13:2-6; Andrews, Exh. EMA-6T at 16:12-14; Christie, Exh. KJC-1T at 17:11-14.
[98] Higby, Exh. ANH-1T at 8:14-19:17.
[99] Schultz, Exh. KJS-3T at 17:1-4.

excluding projects less than $500,000 or $200,000 for electric and gas operations respectively.[100] Staff has tried mightily, but ultimately can see no difference in effect between excluding projects below a certain dollar amount from rates and including those above it. Regardless, Avista presents no reasoned explanation for why defining minor projects in the way that it did is appropriate.[101] That lack of justification makes Avista's definition arbitrary,[102] and the Commission should refuse to apply it.[103] And Avista's minor projects standard produces unreasonable results, allowing it to pro form significantly more projects than the Commission has deemed acceptable and to include projects with dollar amounts significantly less than the Commission has found appropriate.[104] The Commission should reject Avista's definition.

B. The Commission Should Exclude Certain Projects For Which Avista Did Not Properly Calculate Offsetting Factors From The Rates Set In This Case

35 The Commission may value property through a pro forma adjustment if the investment is netted against offsetting factors that minimize its rate impact.[105] Staff recommends that the Commission remove three electric and gas projects from Avista's pro forma plant adjustments because Avista failed to consider offsetting factors.[106] It should do so.

36 Avista contends that it has calculated the offsets that it could quantify.[107] But Avista also acknowledges that it does not attempt to track cost savings, meaning that it prevents acquisition of the data necessary to quantify offsets.[108] Avista also acknowledges that it redeploys the

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[100] Schultz, Exh. KJS-1T at 11:11-17.
[101] Higby, Exh. ANH-1T at 15:6-8; 16:2-11.
[102] BLACK'S LAW DICTIONARY (7th ed. 1999) at 100 (defining arbitrary).
[103] Cascade 2020 GRC Order at 89, ¶ 294 (noting that parties bear the burden of justifying their definition of major).
[104] Higby, Exh. ANH-1T at 14:4-14 (explaining that Avista's eligibility thresholds are only 10 percent as large as those previously accepted); 9:9-10:10 (noting the Commission has previously considered even 25 to 30 pro forma projects too many).
[105] Higby, Exh. ANH-1T at 23:5-12.
[106] Higby, Exh. ANH-1T at 25:22-26:7.
[107] Schultz, Exh. KJS-3T at 18:9-20:5.
[108] Higby, Exh. ANH-1T at 26:9-28:2.

savings resulting from some of the projects underlying the pro forma adjustments, which means that Avista is not controlling costs.[109] The Commission should thus give Avista's claim little or no heed.

37 Avista faults Staff for not adjusting "the level of retirement offsets to match the minimal capital additions" Staff recommends the Commission accept.[110] Avista did not provide any evidentiary basis for such an adjustment for the Commission or the parties to vet, making it inappropriate.[111] And, regardless, Avista demands that Staff recommend that the Commission value plant that Avista has told Staff is retired and thus no longer used and useful.[112] Staff cannot do so.[113]

C. The Commission Should Exclude Avista's Blanket Projects From Rates Set In This Case

38 Staff and Avista also disagree on pro forming certain blanket projects into rates in this case. The Commission recently recognized that certain "blanket" programs are not suitable for recovery as pro forma investments because those projects do not meet the standards applicable to pro forma adjustments.[114] The projects here suffer from the same infirmities, and the Commission should exclude them from rates.

39 Staff recommends removing two blanket projects from Avista's adjustments.[115] These projects involve unexpected expenditures that Avista cannot plan for, meaning they are not programmatic.[116] The projects do widely disparate things,[117] and only by aggregating unrelated

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[109] Higby, Exh. ANH-1T at 28:4-25.
[110] Schultz, Exh. KJS-3T at 9:5-8.
[111] *See Wash. Utils. & Transp. Comm'n v. Cascade Natural Gas Corp.*, Docket UG-200568, Order 06, 4–5, ¶¶ 16–23 (June 18, 2021).
[112] RCW 80.04.250(2).
[113] RCW 80.04.250(2).
[114] 2020 Cascade GRC Order at 94–96, ¶¶ 309–316.
[115] Higby, Exh. ANH-1T at 33:4-39:2.
[116] Rosentrater, Exh. HLR-1T at 20:12-13; 47:6-8.
[117] Rosentrater, Exh. HLR-1T at 20:12-18; 47:10-13.

projects can Avista claim that the program meets a reasonable definition of major.[118] Avista provides no evidence that it considered, let alone quantified, offsetting factors.[119] And the parties cannot evaluate the prudence of projects that do not yet exist and whose need is not yet known.[120] The Commission should decline to allow Avista pro form these projects into rates.

D. The Commission Should Disregard Avista's Arguments About Regulatory Lag

40 Avista's overarching answer to Staff's recommendations is that the Commission should ignore the standards it has long used to evaluate pro forma adjustments because they result in regulatory lag.[121] The Commission should reject Avista's argument, for three reasons.

41 First, Avista lacks the clean hands necessary to make this argument. Avista controls the timing of its filings. It inexplicably submitted a rate case with a stale test year.[122] Avista thus inherently caused at least some of the regulatory lag it now complains of, and the Commission should not hear its complaints.

42 Second, Avista also controls the nature and content of its filings. This means that Avista gets to choose the ground upon which the parties contest its case. It chose a "traditional" rate filing,[123] and it cannot now complain that the parties built their cases around the standards relevant to a traditional rate filing. The Commission has other ratemaking tools at its disposal, and Staff's case may have looked very different if Avista had sought the use of those tools.[124] But Avista did not,[125] and it must live with that choice.

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[118] Higby, Exh. ANH-1T at 35:18-20.
[119] Rosentrater, Exh. HLR-1T at 20:2-21:15; 46:20-48:11.
[120] Higby, Exh. ANH-1T at 35:20-24; *see* Rosentrater, Exh. HLR-1T at 21:9-11; 48:6-7; 52:26-53:3.
[121] *E.g.*, Schultz, Exh. KJS-3T at 12:20-13:8.
[122] Mullins, Exh. BGM-1T at 13:5-11.
[123] Christie, Exh. KJC-1T at 3:5-8.
[124] *E.g.*, 2017 Avista GRC Order at 16, ¶ 31 (noting Staff's support for a multi-year rate plan); 2015 Avista GRC Order at 29–30, ¶ 74 (noting Staff's support for an attrition adjustment).
[125] Avista seems to contend that it declined to pursue alternatives because of what the parties would recommend. Christie, Exh. KJC-1T at 20:9-21:19. Avista again misunderstands the role of the Commission and the parties. The

43 Finally, Avista effectively requests that the Commission abandon the framework it has imposed on the review of traditional rate case filings to ensure rates that are fair to both the utility and customers. As discussed above, some aspects of that framework are procedural, such as the major projects standard, and some are substantive, such as the prudence standard. The Commission should adhere to that framework barring a concrete proposal to replace it with something else. Avista, unfortunately, consciously refrained from providing such a proposal. Again, it must live with that choice.

E. The Non-Provisional Provisional Pro Forma Adjustments

44 In its response to Bench Request No. 11, Avista proposed making provisional its investments in certain projects placed in service before the rate effective date.[126] It made a similar proposal regarding its request to pro form into rates an increase in expense from a labor contract.[127] The Commission struck those proposals from the response,[128] but Avista stated it would make them again on brief.[129] The Commission should reject Avista's proposals.

45 Avista has effectively submitted a new proposal after the close of the record. This affects Avista, Staff, Public Counsel, and the intervenors. Avista has lost the ability to provide testimony to support a claim that its proposal results in fair, just, reasonable, and sufficient rates. The other parties have lost the opportunity to criticize or support Avista's proposal with testimony. By presenting the non-company parties with a "moving target,"[130] Avista has thus deprived them of

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Commission sets rates, not the parties. *E.g.*, RCW 80.28.020. What the Commission finds to be fair, just, reasonable, and sufficient in terms of rates matters, not what the parties recommend. And given that the Commission's findings are prima facie correct, RCW 80.04.430, the Commission's acceptance of a party's recommendation about including plant into rates would only indicate that Avista had made an unjustified request.

[126] Avista's Response to BR 11 at 3.

[127] *Id.* at 4.

[128] *Wash. Utils. & Transp. Comm'n v. Avista Utils.*, Dockets UE-200900 & UG-200901 & UE-0200894, Order 07, 2, ¶ 7 (Aug. 5, 2021).

[129] *Wash. Utils. & Transp. Comm'n v. Avista Utils.*, Dockets UE-200900 & UG-200901 & UE-200894, Avista's Answer to Staff's Motion to Strike, 1, ¶ 2 (July 28, 2021).

[130] *Wash. Utils. & Transp. Comm'n v. Harbor Water Co., Inc.*, Docket U-87-1054-T, Third Suppl. Order, 1988 Wash. UTC Lexis 68, *36-37 (May 7, 1988).

any meaningful chance to respond with anything other than legal argument. The Commission should not allow that.

46 Avista argues that its new proposal creates no problem because it is "'less favorable position' (to it) than what it had advocated" previously.[131] Staff cannot accept that assessment, nor should the Commission. Staff has challenged some of the pro forma adjustments that Avista seeks to make provisional because they do not involve known and measurable amounts,[132] do not account for offsetting factors,[133] or because Avista has not demonstrated the prudence of the investments.[134] By making these investments provisional, Avista provides itself the chance to marshal new evidence in a later proceeding to remedy the defects in its current case. That benefits, rather than prejudices, Avista and prejudices, rather than benefits, the non-company parties. The Commission should not allow it at this stage in the proceeding.

47 Avista also contends that it has a right to change its position in its brief. Staff does not dispute that parties may abandon an issue they raise or adopt the position offered by another party. A party who does so merely adapts its case to the record properly developed in a proceeding. But Avista has no right to do what it seeks to do here—offer a new proposal after the other parties can no longer offer an evidentiary critique of it—because doing so impermissibly deprives the other parties of a meaningful opportunity to respond.[135]

48 Regardless, the Commission should not accept Avista's proposal as concerns rate base. The Commission allows for provisional pro forma adjustments based on recent amendments to

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[131] *Wash. Utils. & Transp. Comm'n v. Avista Utils.*, Dockets UE-200900 & UG-200901 & UE-200894, Avista's Answer to Staff's Motion to Strike, 2, ¶ 5 (July 28, 2021).
[132] Infra, §§ VI.B., VII.B., VII.C., and VIII.B.
[133] Infra, § VI.B.
[134] Infra, § VII.C.
[135] *Armstrong v. Manzo*, 380 U.S. 545, 550, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965) ("A fundamental requirement of due process is the opportunity to be heard. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.") (internal quotation omitted).

RCW 80.04.250 that allow the Commission to value property placed in service after the rate-effective date.[136] The property at issue in Avista's proposal will be in service before the rate effective date. It is definitionally not within the scope of a provisional adjustment,[137] and Avista provides no justification for abandoning long-practiced norms about pre-rate-effective-date pro forma adjustments by making these provisional.[138] The Commission should reject the proposal. Doing so will send a signal that the Commission will hold the line drawn at the rate effective date in the Used and Useful Policy Statement, which will benefit the Commission. The COVID-19 pandemic has shown that utilities can delay projects, and thus their impacts on ratepayers.[139] By provisionally valuing property, the Commission will incent utilities to avoid those delays, rather than embrace them when appropriate, to prevent the need to refund the valuation. That fact will engender significant strife over the prudence of utility spending in rate proceedings.

49 The Commission should also reject Avista's request to make provisional its pro forma labor costs. The policy statement concerns rate base;[140] Avista's proposal does not. And Avista offers no justification for departing from long-held Commission precedent regarding the treatment of pro forma expenses for the labor costs. The Commission should reject it.

V. ADVANCED METERING INFRASTRUCTURE (AMI)

50 In this case, Avista seeks rate recovery of its AMI costs and investments. Staff has reviewed Avista's AMI case and does not contest its recovery of test-year costs or its restating and pro forma adjustments.[141] Staff does, however, recommend that the Commission modify

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[136] Used and Useful Policy Statement at 7, ¶ 20; 10, ¶ 29
[137] *Id.*
[138] *See id.*
[139] *E.g.*, 2020 Cascade GRC Order at 91, ¶ 303.
[140] Used and Useful Policy Statement at 6, ¶ 19; 7, ¶ 20; 10, ¶ 29.
[141] White, Exh. AIW-1T at 10:3-10.

those adjustments with Staff's proposed cost of capital,[142] which is more appropriate than Avista's for the reasons explained above.

VI. WILDFIRE PLAN DEFERRAL AND BALANCING ACCOUNT

51 Avista seeks to defer certain wildfire O&M costs, pro form other O&M and capital costs into rates, and create a balancing account. The Commission should deny the deferral petition as unjustified, approve Staff's alternative wildfire pro forma adjustment as more consistent with the Commission's ratemaking standards than Avista's, and deny the balancing account for various reasons.

A. The Commission Should Deny Avista's Deferral Petition Because Avista Does Not Show Extraordinary Circumstances Or The Need To Resort To Extraordinary Ratemaking Tools

52 Utilities operating in Washington may defer costs with approval from the Commission.[143] Obtaining that approval requires a showing of extraordinary circumstances[144] involving material monetary amounts.[145]

53 The Commission should deny Avista's deferral petition, for two reasons. First, Avista fails to show extraordinary circumstances. Avista's deferral involves costs making up part of a 10-year plan,[146] and expenses that are so routine in nature that the Commission ordered Avista to spend tens of millions of dollars on similar line items over the last twenty years.[147] The costs do not meet the Commission's standards for deferral.[148] Second, Avista fails to show the need for

[142] White, Exh. AIW-1T at 10:9-10.
[143] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UG-040640, UE-040651, UE-031471, & UE-032043, Order 06, 64, ¶ 170 (Feb. 18, 2005).
[144] *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.,* Docket UE-140762, Order 08, 114, ¶ 273 (March 25, 2015) (2014 Pac. Power GRC Order) 114, ¶ 273.
[145] *Wash. Utils. & Transp. Comm'n v. Nw. Nat. Gas Co*., Dockets UG-080519 & UG-080530, Order 01, 3, ¶ 7 (May 2, 2008).
[146] White, Exh. AIW-1T at 16:19-17:1.
[147] White, Exh. AIW-1T at 27:19-28:5.
[148] *See* White, Exh. AIW-1T at 16:3-17:2.

extraordinary ratemaking treatment.[149] Avista seeks to defer costs that it incurred or will incur before the rate effective date. It could have simply pro formed these costs into rates, or built the costs into a rate plan, but chose not to.[150] The Commission should not incent deferrals as a replacement for other, less extraordinary ratemaking tools.[151]

54 Avista nevertheless contends that a deferral is necessary to preserve its opportunity to recover its costs.[152] That claim is baffling. Avista can recover its wildfire costs as part of a test year in a future rate case (like the one Avista will soon file).[153] Denying the deferral may prevent Avista from recovering its wildfire costs here, but does not disallow them.

B. The Commission Should Accept Staff's Pro Forma Adjustment 3.17 Rather Than Avista's Because Staff's Better Comports With The Commission's Pro Forma Standards

55 Staff and Avista present competing wildfire pro forma adjustments. The Commission should accept Staff's and reject Avista's.

56 Staff's adjustment, which includes approximately $1.5 million in O&M costs and $1.6 million in plant,[154] involves a straightforward application of the Commission's pro forma standards. The dollar amounts are known and measurable because they are comprised of actual 2020 spending for O&M and capital additions.[155] The plant is in-service, and thus used and useful.[156] Staff believes that Avista prudently incurred the expenses,[157] and has offset the rate impact as best it can.[158]

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[149] Mullins, Exh. BGM-1T at 39:5-9.
[150] Cf. White, Exh. AIW-1T at 17:5-11; Mullins, Exh. BGM-1T at 38:4-9.
[151] *Cf. In re Cent. Vt. Public Serv. Corp.*, Docket Nos. 6946 & 6988, 2005 WL 756091, at *34 (Mar. 29, 2005) (noting the intergenerational equity issues raised by deferrals).
[152] Andrews, Exh. EMA-6T at 125:4-8.
[153] Andrews, TR. 224:6-18.
[154] White, Exh. AIW-1T at 25:5-14.
[155] White, Exh. AIW-1T at 25:7-10, 25:17-26:2.
[156] White, Exh. AIW-1T at 25:9-10.
[157] *See* White, Exh. AIW-1T at 20:11-21:21.
[158] White, Exh. AIW-1T at 25:11-14.

57 Avista's adjustment involves baffling choices about what was included in rates and a less than faithful application of the Commission's pro forma standards. As mentioned above, Avista chose to seek deferral of O&M costs rather than to pro form them into rates with the other 2020 and 2021 wildfire costs at issue here. In consequence, Avista asks the Commission to pro form into rates distant, estimated O&M costs and some estimated capital expenses that will not be used and useful until after the rate effective date.[159] Avista also refuses to attempt to calculate offsets such as any reduced need to deploy personnel to respond to wildfires and any reduced need to replace damaged equipment resulting from its wildfire spending.[160]

58 Given the choice between two competing pro forma adjustments, the Commission should select the one that best comports with its ratemaking standards. That one is Staff's. The Commission should accept it.

59 Avista accuses Staff of recommending that the Commission provide it with "minimal recovery of costs."[161] This is a gross distortion of Staff's recommendation. Staff simply recommends that the Commission treat Avista's wildfire costs as it has traditionally treated all utility costs and allow for Avista to recover them as part of a historic test year unless Avista shows prudent post-test year investment involving known and measurable changes for which Avista considered offsetting factors. Doing so ensures that the costs are auditable and that any savings realized from Avista's spending accrue to the ratepayers who fund it.[162] Staff does not recommend minimal cost recovery; Staff recommends appropriate recovery at the appropriate time, something fair to both ratepayers and Avista.

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[159] White, Exh. AIW-1T at 18:14-19, 24:14-21.
[160] White, Exh. AIW-1T at 24:1-8; Andrews, Exh. EMA-1T at 76 n.51.
[161] Andrews, Exh. EMA-6T at 123:25-26.
[162] 2016 Avista GRC Order at 47, ¶ 80.

C. The Commission Should Reject Avista's Two-Way Balancing Account

60 Avista proposes a two-way balancing account to address varying O&M costs over the life of its wildfire plan. The Commission should deny it permission to create the balancing account, for two reasons.

61 First, the Commission adheres to the modified historical test year, and for good reasons, such as the auditability of data and the matching of costs and savings.[163] Avista asks the Commission, on a rolling, repeated, and going-forward basis, to embed in rates estimates of future expenses for which it has effectively refused to calculate offsetting factors.[164] That request violates the known and measurable and the offsetting factors standards.[165]

62 Second, Avista's account would create an administrative nightmare. The costs at issue are literally indistinguishable from costs that the Commission has ordered Avista to incur for several decades.[166] Avista provides no method for separating what it will book in the balancing account and what it will book as normal O&M costs. That reality almost guarantees disputes between Avista and the parties about which costs are booked where, especially given that customer advocates have a strong incentive to push costs out of the balancing deferral (so as to receive a refund), and Avista has a countervailing interest in pushing costs into the deferral (so as to later receive revenue).

VII. COLSTRIP CAPITAL

63 Avista requests recovery of capital costs associated with Colstrip Units 3 and 4. In particular, Avista is requesting to pro form capital costs associated with the 2021 Colstrip Unit 3 Overhaul ("Unit 3 Overhaul") and the Dry Ash Disposal System ("Dry Ash") and is seeking

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[163] 2016 Avista GRC Order at 47, ¶ 80.
[164] White, Exh. AIW-1T at 26:21-22
[165] White, Exh. AIW-1T at 24:1-8, 26:21-27:4.
[166] White, Exh. AIW-1T at 27:7-29:4.

recovery of its SmartBurn investment for Colstrip Units 3 and 4.[167] Avista claims that it will incur the Unit 3 Overhaul and Dry Ash costs in 2021 and 2022.[168] The Commission should exclude the Unit 3 Overhaul and the Dry Ash costs from rates because they fail to meet the Commission's pro forma adjustment standard—due to these costs not being *known and measurable*.[169] Before providing argument as to why both these costs are not known and measurable, this brief will provide a brief explanation of recent disputes among the Colstrip Owners to facilitate a better understanding of the argument. Finally, the Commission should deny recovery of the SmartBurn investment as imprudent because Avista has failed to show the investment was necessary.

A. Brief Explanation Of Recent Disputes Among The Colstrip Owners.

64 Colstrip Units 3 and 4 ("Colstrip") are coal-fired generation units located in Colstrip, Montata. Colstrip is owned by Avista, Northwestern Corporation (Northwestern), PacifiCorp, Portland General Electric (PGE), PSE, and Talen Montana, LLC (Talen) as follows:

Owner	Unit 3	Unit 4
Avista	15%	15%
Northwestern	--	30%
PacifiCorp	10%	10%
PGE	20%	20%
PSE	25%	25%
Talen	30%	--

65 Avista, PacifiCorp, PGE, and PSE (collectively "Pacific Northwest Owners") and Northwestern/Talen have divergent interest pertaining to the future of Colstrip. These divergent

[167] Thackston, Exh. JRT-1T at 81:12-83:12; 105:14-107:4; Thackston, Exh. JRT-1T at 55:6-68:2.
[168] Thackston, Exh. JRT-1T at 9–15.
[169] A known cost involves an event occurring before or during the rate year and whose impact is in place during the rate year. *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-090134 & UG-090135 & UG-060518, Order 10, 21, ¶ 45 (Dec. 22, 2009). A measurable costs involves concrete dollar amounts, not "an estimate, a projection, the product of a budget forecast, or some similar exercise in judgment–even informed judgment–concerning future revenue, expense[,] or rate base. 2009 Avista GRC Order at 21, ¶ 45.

interests are primarily the result of the Pacific Northwest Owners facing governmental mandates to eliminate the use of coal-fired electricity in states where they serve customers—which becomes effective as soon as 2025. In particular, Washington and Oregon legislation effectively eliminates the Pacific Northwest Owners' ability to utilize Colstrip in the near future to serve their load in those states.[170] Talen and Northwestern are not subject to these restrictions and have stated their support to keep Colstrip operational until 2042.[171] These divergent interests have led to disputes between the Pacific Northwest Owners and Northwestern/Talen. These disputes include (1) a pending arbitration pertaining to the votes needed to close Colstrip; and (2) a pending lawsuit pertaining to the legality of recent Montana legislation that targets Colstrip. The pending arbitration was initiated by Northwestern and focuses on the question of whether Colstrip can be closed without a unanimous vote of the Colstrip Owners ("Northwestern Arbitration"). Northwestern contends that a unanimous vote among the owners is needed to close Colstrip—pursuant to the terms of the Colstrip Ownership and Operating Agreement ("O&O Agreement").[172] The Pacific Northwest Owners explain the scope of the Northwestern Arbitration:

> In short, the dispute to be resolved in arbitration is whether the O&O Agreement provides that a single minority owner of Colstrip, such as Northwestern and/or Talen, can force the Pacific Northwest Owners to keep both Colstrip units open and to fund a 70% share of operating costs in perpetuity.[173]

66 The Northwestern Arbitration previously included a dispute pertaining to the 2021

[170] RCW 19.405.030(1)(a) (Washington law requiring "each electric utility . . . eliminate coal-fired resources from its allocation of electricity" by December 31, 2025.); ORS § 757.518 (Oregon law requiring "electric compan[ies] . . . eliminate coal-fire resources from [their] allocation of electric" by January 1, 2030.).
[171] Thackston, Exh. JRT-27CX at 38, ¶ 54–55; *See also*, Gomez, Exh. DCG-11C at 2
[172] Thackston, Exh. JRT-27CX at 39.
[173] Thackston, Exh. JRT-27CX at 41, ¶ 54.

Colstrip Operating Budget ("2021 Colstrip Budget"). The dispute over the 2021 Colstrip Budget could have impacted the Unit 3 Overhaul costs within this general rate case—as explained in the testimony of Staff witness Gomez.[174] However, Northwestern amended its demand for arbitration to no longer reference the 2021 Colstrip Budget on April 2, 2021.[175] Northwestern's amendment to its demand for arbitration was in response to the owners unanimously approving the 2021 Colstrip Budget.[176]

67 The pending lawsuit is before the United States District Court for the District of Montana and challenges the legality of Montana Senate Bill 265 (2021) ("SB 265").[177] SB 265 impacts Section 18 of the Colstrip O&O Agreement ("Section 18"). Section 18 governs the process for disputes among the Colstrip Owners and provides that unresolved disputes will be subject to arbitration (1) in Spokane; (2) before a single arbitrator; and (3) subject to the Washington Uniform Arbitration Act.[178]

68 SB 265 purports to invalidate provisions of Section 18 and require applicable arbitrations to take place in: (1) Montana; (2) before a panel of three arbitrators; and (3) subject to the Montana Uniform Arbitration Act.[179] SB 265 also applies retroactively to January 1, 2021—and consequently could be applicable to the venue and procedures of the pending Northwestern

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[174] Gomez, Exh. DCG-1CT at 20:2-4 ("Compounding this uncertainty even more, Talen's estimated Dry Ash costs are part of the disputed 2021 Colstrip budget, which is the subject of a current arbitration among all the Colstrip owners."). Northwestern's original demand for arbitration referenced the 2021 Colstrip Budget stating: "[b]y refusing to approve the proposed *2021 Operating Budget* and insisting the Project be operated in a manner to accommodate their exit from the Project by 2025, the Pacific Northwest Owners improperly withheld their approval of the annual operating budget." Thackston, Exh. JRT-27CX at 39, ¶ 48 (emphasis added).
[175] Thackston, Exh. JRT-27CX at 40, ¶ 52. The demand for arbitration was amended just 19 days before Staff filed its responsive testimony in this docket on April 21, 2021.
[176] Thackston, Exh. JRT-27CX at 40, ¶ 50. Budget was unanimously approved by the owners on March 22, 2021.
[177] *Portland General Electric Company, et al. v. Northwestern Corporation*, 1:21-cv-000047-SPW-KLW, U.S. District Court Montana (filed May 04, 2021).
[178] Thackston, Exh. JRT-27CX at 46–47, ¶ 7.
[179] Thackston, Exh. JRT-27CX at 48–49, ¶ 79. Senate Bill 265 states "An agreement concerning venue involving an electrical generation facility in this state is not valid unless the agreement requires that arbitration occur within the state before a panel of three arbitration selected under the [Montana] Uniform Arbitration Act unless all parties agree in writing to a single arbitrator."

Arbitration.[180] Talen has already filed a lawsuit in the state of Montana District Court seeking to move the Northwestern Arbitration from Spokane to Montana to comply with SB 265.[181] The Pacific Northwest Owners have claimed that both Talen and Northwestern supported SB 265 during Montana legislative hearings.[182] On May 19, 2021, the Pacific Northwest Owners filed an amended complaint ("amended complaint") claiming that SB 265 violates the Contract Clause of the United States Constitution and Montana Constitution and is preempted by the Federal Arbitration Act.[183]

69 Within the same lawsuit, the Pacific Northwest Owners are also seeking an injunction (among other remedies) against the Montana Attorney General from enforcing Montana Senate Bill 266 (2021) ("SB 266").[184] SB 266 allows the Montana Attorney General to levy fines up to $100,000 per day or seek injunctive relief against any Colstrip Owner[185] for "[t]he failure or refusal of an owner . . . to fund its share of operating costs associated with a jointly owned electrical generation facility. . . ."[186] SB 266 defines "operating costs" to include both "the costs to construct, operate, and maintain the electrical generation facility in accordance with prudent utility practice" as well as "expenditures for capital improvements or replacements."[187] For the purposes of this general rate case, it is important to note that SB 266 purports to be *retroactive to January 1, 2021*—and therefore could impact the 2021 Colstrip Budget.[188]

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[180] Thackston, Exh. JRT-27CX at 48–49, ¶ 79. SB 265 states "[This act] applies retroactively, within the meaning of 1-2-109, to applications made on or after January 2, 2021."
[181] *Talen Montana, LLC v. Avista, et al.,* DV-21-0511, Montana District Court (filed May 5, 2021). Thackston, Exh. JRT-27CX at 113, 119.
[182] Thackston, Exh. JRT-27CX at 5, ¶ 9.
[183] Thackston, Exh. JRT-27CX at 50, 54, 55.
[184] Thackston, Exh. JRT-27CX at 60.
[185] SB 266 applies to "an owner of a jointly owned electrical generation facility in the state of [Montana]"—*e.g.,* the owners of Colstrip. Thackston, Exh. JRT-27CX at 78.
[186] Thackston, Exh. JRT-27CX at 78.
[187] Thackston, Exh. JRT-27CX at 78.
[188] Thackston, Exh. JRT-27CX at 79–80.

70 SB 266 also prohibits conduct related to the closure of Colstrip—the same subject matter of the pending Northwestern Arbitration. SB 266 would fine any Colstrip Owner $100,000 per violation (or allow the Montana Attorney General to seek injunctive relief) for any "conduct" that would bring about the permanent closure of Colstrip—unless such owner receives unanimous consent from the other Colstrip Owners to do so.[189] In its amended complaint, the Pacific Northwest Owners explain their concerns pertaining to SB 266:

> Senate Bill 266 impairs the Pacific Northwest Owners' contractual rights to close one or both units with less-than unanimous consent and to propose and vote to close one or both units. *The Pacific Northwest Owners also face the risk that the Attorney General will interpret the new statute broadly* to request the levying of the excessively punitive fines if the Pacific Northwest Owners (1) exercise their contractual rights with regard to funding Colstrip, or (2) exercise their contractual rights to submit proposals to the Committee or vote on proposals that could result in closing either, or both, of Colstrip's units without Talen's and Northwestern's consent.
>
> Senate Bill 266 declares the exercise of these contract rights to be unfair and deceptive acts. The law empowers the Montana Department of Justice *to seek injunctive relief and fines of up to $100,000 per day* for each day of any violation.[190]

71 The Pacific Northwest Owners claim that both Talen and Northwestern lobbied the Montana Legislature to pass SB 266.[191] In the amended complaint, the Pacific Northwest Owners claim that SB 266 violates the Commerce, Contract, and Due Process Clause of the United States Constitution.[192]

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[189] *See* Thackston, Exh. JRT-27CX at 78–80. SB 266 section 2(2)(a) states "[c]onduct by one or more owners of a jointly owned electrical generation facility in the state to bring about permanent closure of a generating unit of a facility without seeking and obtaining the consent of all co-owners of a generating unit is an unfair or deceptive act or practice. . . . SB 266 section 2(a) also states "whenever the [Montana Department of Justice] has reason to believe that a person is using . . . an unfair or deceptive act or practice . . . the [Montana Department of Justice] may bring an action in the name of the state against the person to restrain by *temporary or permanent injunction* or temporary restraining order." (emphasis added). SB 266 section 2(b) further states "if a court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by this section, the department may . . . recover . . . a civil fine of not more than *$100,000 for each violation*. Each day of a continuing violation constitutes a separate offence." (emphasis added).

[190] Thackston, Exh. JRT-27CX at 29, ¶ 5–6 (emphasis added).

[191] Thackston, Exh. JRT-27CX at 42, ¶ 57.

[192] Thackston, Exh. JRT-27CX at 57, 61, 65.

B. The Commission Should Not Pro Form Capital Costs Associated With The 2021 Colstrip Unit 3 Overhaul Because These Costs Are Not Known And Measurable

72 Avista seeks to pro form $2.1 million in projected capital costs associated with the Unit 3 Overhaul.[193] The Commission should not include these costs in electric rates as they are not *known and measurable*. The pro forma amount is not known and measurable because of: (1) uncertainty as to Montana SB 266; (2) uncertainty as to the future of Colstrip; and (3) the inaccuracy of prior Colstrip budgets documented in prior Commission Orders. The Commission should wait until Avista incurs the actual costs associated with the Unit 3 Overhaul before considering whether to include such costs into electric rates.

73 First, it is uncertain how Montana SB 266 will affect the scope, scale, timing, and costs of the 2021 Unit 3 overhaul.[194] As previously explained, SB 266 empowers the Montana Attorney General to seek injunctive relief and fines up to $100,000 per day against the Colstrip Owners for failing to fund or engaging in conduct that could bring about closure of Colstrip.[195] SB 266 purports to be *retroactive to January 1, 2021*—to apply to the 2021 Colstrip Budget.[196] It is uncertain how SB 266 will be interpreted and enforced by the Montana Attorney General and the resulting impact to the 2021 Colstrip Budget. Avista (as one of the Pacific Northwest Owners) explains:

> And the bill presents the Pacific Northwest Owners with the risk of substantial fines *if the Attorney General reads the statute expansively to require their approval of Colstrip budgets* designed to extend the useful life of units they will not be able to use in Washington and Oregon. . . . [T]he Pacific Northwest Owners are *forced to continue investing* in a Montana power source for the benefit of Northwestern and Talen, against the interest of their customers and their own economic interests.[197]
>
> Senate Bill 266 is designed to—and unless it is declared unlawful will—deter the Pacific

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[193] Thackston, Exh. JRT-1T at 82:10-13.
[194] Gomez, Exh. DCG-1CT 32:9-33:8.
[195] Thackston, Exh. JRT-27CX at 78–79.
[196] Thackston, Exh. JRT-27CX at 78–79.
[197] Thackston, Exh. JRT-27CX at 32–33, ¶ 120.

> Northwest Owners from exercising their rights with respect to closing Colstrip units and exercising their rights regarding their funding obligations. The threat of $100,000 fines per day for exercising those rights effectively prevent their exercise. *Ultimately, Senate Bill 266—unless it is declared unlawful—impairs the Pacific Northwest Owners' contractual rights and forces the Pacific Northwest Owners and their customers to subsidize Northwestern's and Talen's continued use of Colstrip.*[198]

74 It is possible that the 2021 Colstrip Budget could be interpreted as a failure of the owners to "fund its share of operating costs" or "conduct" that would bring about closure of Colstrip—in violation of SB 266.[199] Prior to approving the 2021 Colstrip Budget, [REDACTED]

[REDACTED][200]

If an owner is found to be in violation of SB 266, it is uncertain how the 2021 Colstrip budget (including the Unit 3 Overhaul) would have to change to avoid penalties and come into compliance with the law. It is also uncertain what type of injunctive relief the Montana Attorney General could seek against the owners pertaining to the projected costs within the 2021 Colstrip Budget.

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[198] Thackston, Exh. JRT-27CX at 46, ¶ 70.
[199] Thackston, Exh. JRT-27CX at 78–79.
[200] Gomez, Exh. DCG-11C at 1–2.

CONFIDENTIAL PER PROTECTIVE ORDER - REDACTED VERSION

75 Second, given the divergent interests of the Colstrip Owners previously discussed, the pending Northwestern Arbitration, and the pending federal lawsuit involving SB 265 and 266, the Commission should refrain from including any pro forma Colstrip capital additions into electric rates. The Colstrip Owners are currently arbitrating what votes are needed to close Colstrip. The pending outcome of this arbitration and the divergent interests of the Pacific Northwest Owners and Talen/Northwestern make the future of Colstrip uncertain. This uncertainty is compounded by the pending federal lawsuits involving the recent Montana legislation that targets Colstrip.

76 Third, the historic inaccuracy of Colstrip budgets has been documented in prior Commission orders. In Docket UE-130617, the Commission approved a settlement agreement which removed $1 million from Colstrip O&M expenses. In approving the settlement agreement, the Commission noted how prior Colstrip budgets have overestimated costs*:*

> We note that ICNUs' Exhibit No. DWS-3 shows that from 2009 to 2021 PSE budgeted between 2.0 percent and 11.6 percent more for Colstrip O&M expenses than it actually incurred, with an *annual average of $2.7 million more budgeted than actual expenses*.
>
> It is not unusual for a company's filed budget to vary from its actual expenses for a particular generating station. We note that this variation is expected whether the difference results in overstatements or underestimates of costs. Here, however, *several years of filed data show only overestimates of costs;* thus, we find the Settlement's inclusion of this adjustment reasonable and in the public interest.[201]

77 In Docket UE-190529, the Commission further noted Staff's assessment that Talen (the operator of Colstrip) had a history of overestimating costs within its budgets pertaining to a planned 2020 Unit 4 Overhaul:[202]

> Staff is concerned that Talen, the Colstrip operator, and the Company are over-estimating the projected costs, and cites two examples from the 2017 GRC where projected major

[201] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy,* Docket UE-130617, Order 06, 8–9, ¶ 22 (Oct. 23, 2013) (emphasis added).
[202] 2019 PSE GRC Order at 75, ¶ 225. ("In its initial filing, PSE explains that the rate year includes a *planned overhaul of Colstrip Unit 4 in 2020*, as projected in the plant operator's budget.") (emphasis added).

> maintenance costs at Colstrip were *more than twice the amounts of the actual costs*. . . .
>
> Staff witness Liu contends that the "*the magnitude of the variance between the budget and the actual cost is alarming*." Liu hypothesizes that, due to the age and uncertain economics of Units 3 and 4, the scope of future planned major maintenance may be scaled back. Liu notes that the 2020 budget for Colstrip was not finalized at the time Staff filed its testimony.[203]

78 The Commission agreed with Staff's assessment that Talen had a "history of overestimating maintenance costs." Consequently, the Commission factored this into its decision to not allow PSE to recover the projected Unit 4 Overhaul costs within the 2020 Colstrip Budget:

> First, like Staff, we are not comfortable allowing the Company to begin collecting these *projected costs* in rates in light of both the *Company's and the operator's history of overestimating maintenance costs.* . . . Those factors weight in favor of deferring the recovery of any major maintenance costs to ensure that only actual costs incurred by PSE are recovered from ratepayers.[204]

79 As with the projected 2020 Unit 4 Overhaul cost in Docket UE-190529, the Commission should not allow Avista to recover the projected 2021 Unit 3 Overhaul costs within this docket. This is because of the documented history of overestimation of costs in Colstrip budgets. The Commission should wait to consider these costs in a later docket to "ensure that only actual costs incurred by [Avista] are recovered from ratepayers."[205]

80 Consequently, the projected $2.1 million in Unit 3 Overhaul costs should not be included in rates because the pro forma amounts are not known and measurable. Given the uncertainties discussed at Colstrip and the historic inaccuracy of prior Colstrip budgets, it is uncertain if Avista will incur the $2.1 million in projected costs. Furthermore, waiting for these costs to be incurred could also facilitate a better record as to whether these costs are prudent and not intended to extend the life of Colstrip past 2025—as mandated in the 2019 GRC settlement.[206]

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[203] *Id.* at 76, ¶ 251–252 (emphasis added).
[204] *Id.* at 77, ¶ 256 (emphasis added).
[205] *Id.*
[206] 2019 Avista GRC Order at 19–20, ¶ 51 (emphasis added).

Accordingly, the Commission should wait until the Unit 3 Overhaul costs are incurred by Avista before considering whether to include these costs in electric rates.

C. The Commission Should Not Pro Form Capital Costs Associated With Dry Ash Because These Costs Are Not Known And Measurable

Avista seeks to pro form $6 million in capital costs associated with Dry Ash.[207] Dry Ash is required to be installed at Colstrip by July 1, 2022—pursuant to the terms of a settlement involving the Colstrip Wastewater Administrative Order on Consent (2016 AOC Settlement).[208] Avista anticipates that it will incur these costs in 2021 and 2022. The Commission should wait until Avista incurs the Dry Ash capital costs before considering whether to include these costs in electric rates. This is because the Dry Ash pro forma amounts are not known and measurable, due to: (1) the Dry Ash costs not being certain; (2) Avista admitting the Dry Ash costs could increase; (3) the entirety of the Dry Ash costs not being approved by the Colstrip Owners; and (4) the uncertainty of if/when Dry Ash will be installed and become used and useful.

81 First, there is insufficient evidence in the record that the Dry Ash costs are certain. Avista explains how Dry Ash is a "first of its kind" project:

> [A] dry ash waste disposal system for a coal plant like Colstrip had not been built before. While there are mining operations where this has been deployed for similar purposes, the concrete-like properties of the coal ash make this problem very different. This would be a "first of its kind" type of dry ash system.[209]

82 Due to a system like this never being built before, Avista explains how this contributed to the estimate of this project dramatically increasing since its initial filing.[210] Avista's initial filing estimated the costs at approximately $13.2 million—with Avista's share being approximately

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[207] Thackston, Exh. JRT-12T at 32:12-15.
[208] Gomez, Exh. DCG-1CT at 12:6-8. Section 2(A)(i) of the 2016 AOC Settlement Agreement requires the Colstrip owners to "[C]onvert to a non-liquid disposal system for CCR material generated by Colstrip Units 3 and 4's scrubbers no later than July 1, 2022."
[209] Thackston, Exh. JRT-12T at 32:20-23.
[210] Thackston, Exh. JRT-12T at 32:23-33:6.

$2.0 million.[211] The initial $13.2 million estimate was provided by [REDACTED]

[REDACTED] The current cost estimate has now skyrocketed to approximately $39.9 million—with Avista's share being approximately $6.0 million.[212]

83 The revised $39.9 million is an estimate made by Talen's own internal design of the Dry Ash project—a project that has never been built before.[213] Talen's estimate for Dry Ash has *more than tripled the projected costs*—just in the span of this general rate case. This Commission has already established that Talen has a documented history of overestimating costs, and, therefore, should have *no confidence* in the $39.9 million estimate for Dry Ash.

84 Staff has further provided testimony that it has *no confidence* in Talen's $39.9 million Dry Ash estimate.[214] From the limited discovery received, Staff could not obtain evidence as to the source or justification of the dramatic increase in Talen's estimate—from the prior estimate by [REDACTED]. [215] Staff further could not obtain evidence as to what Dry Ash technologies were considered before Talen moved ahead with designing its own system.[216] As stated by Staff witness Gomez, these projected costs are "the product of Talen's estimates that come from an unknown origin—that significantly departs from Avista's initial estimate within its initial filing."[217] On rebuttal, Avista testifies that "[t]he current costs of the project is supported by final

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[211] Thackston, Exh. JRT-1T at 8:7-8.
[212] Thackston, Exh. JRT-12T at 32:12-15.
[213] Gomez, Exh. DCG-1CT at 19:4-5.
[214] Gomez, Exh. DCG-1CT at 19:5-6.
[215] Gomez, Exh. DCG-1CT at 18:18-19:2. Staff was only able to receive portions of the Dry Ash study from Avista. Staff witness David Gomez testified:

> [These portions contained] no references to costs nor did they justify the dramatic increase in costs for Dry Ash contained in Talen's budget. Further, these potions of the report provide no result from the pilot test referred to in the 2016 AOC Settlement Agreement, which was intended to confirm the viability of the Dry Ash Disposal System to mitigate continued contamination of ground water by CCR waste.

[216] Gomez, Exh. DCG-1CT at 19:4-6.
[217] Gomez, Exh. DCG-1CT at 19:16-20:1.

designs, vendor quotes, and equipment bids"—however, Avista did not provide these documents as exhibits to its rebuttal testimony and they are not currently within the record for the Commission's consideration.[218]

85 Second, Avista admits that projected Dry Ash costs could increase. In rebuttal, Avista states, "Other issues may still arise that could cause the project estimate to increase."[219] The claim that these costs could increase is not surprising given that the projected Dry Ash costs have already more than tripled—from $13.2 million to $39.9 million—just in the span of this general rate case. However, this claim (that the costs could increase) contradicts Avista's other statement in rebuttal that "a firm project budget has been established."[220] Avista's conflicting testimony on the certainty of the projected Dry Ash costs further contributes to these costs not being known and measurable.

86 Third, the entirety of the projected costs of Dry Ash have yet to be approved by the Colstrip Owners. Staff testified that evidence within the record indicated that only a small percentage of Dry Ash costs have been approved by the Colstrip Owners.[221] This testimony is supported by a January 15, 2021, letter in which [222]

87 In rebuttal, Avista claims that the Colstrip Owners have made partial approvals of $17,251,000 of the $39.9 million to cover 2021 costs.[223] Avista asserts that this approval occurred as of May 1, 2021 (after Staff filed its responsive testimony)—but provided no exhibits

[218] Thackston, Exh. JRT-12T at 35 (emphasis removed).
[219] Thackston, Exh. JRT-12T at 33:14-15.
[220] Thackston, Exh. JRT-12T at 37:8-9.
[221] Gomez, Exh. DCG-1CT at 14:7-15.
[222] Gomez, Exh. DCG-36C at 1.
[223] Thackston, Exh. JRT-12T at 31:9-11.

to corroborate this assertion in its rebuttal testimony.[224] Assuming this assertion is correct, this means that the Colstrip Owners have yet to approve the remaining $22,649,000 for 2022 Dry Ash costs. In other words, Avista is asking to pro form its share of $22,649,000—*that has not even been approved by the Colstrip Owners yet*. The Operator does not even need to propose a 2022 Colstrip Budget until September 2021.[225] There is no certainty that these costs will eventually be approved within the 2022 Colstrip Budget—given the unprecedented disputes (and divergent interests discussed) among the Colstrip Owners surrounding the recent 2021 Colstrip Budget. [226] The Commission should not presume that the remaining $22,649,000 in Dry Ash costs will be approved within the 2022 Colstrip Budget.

88 Fourth, it is uncertain if/when Dry Ash will be installed and become *used and useful* for ratepayers.[227] Under the terms of the 2016 AOC Settlement Agreement, the date to install Dry Ash (July 1, 2022) may be extended by mutual agreement of the parties.[228] On February 19, 2021, Montana Environmental Information Center, Sierra Club, and National Wildlife Federation (collectively "Plaintiffs to the 2016 AOC Settlement Agreement" or "Plaintiffs") sent the Colstrip Owners a letter.[229] In this letter, the Plaintiffs expressed a willingness to discuss the possibility of extending the date to install Dry Ash in exchange for firm closure dates of Colstrip.[230] In addition to the letter from the Plaintiffs,

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[224] Thackston, Exh. JRT-12T at 31 9-11 ("As of May 1, 2021, the Owners have since approved a total of $17,251,000 for this project to cover 2021 expenses.").
[225] Colstrip Ownership and Operation Agreement page 10 section 10. (On or before September 1 of each year, the Operator shall submit to the Committee a budget . . . .").
[226]Gomez, Exh. DCG-11C at 1.

(emphasis added); Thackston, Exh. JRT-12 at 38:20-22 ("There were significant differences among the Owners concerning the budget and the process took longer than usual . . . .").
[227] RCW 80.04.250(2).
[228] Gomez, Exh. DCG-6, Section 2, Subsection A ("[T]he Conversion Date may be extended by mutual agreement of the parties for any reason.").
[229] Gomez, Exh. DCG-29.
[230] Gomez, Exh. DCG-29.

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> [231]

In rebuttal, Avista states that "[s]peculation of what might happen in a settlement should not be a basis for denying Avista's request for this project."[232] Staff is not arguing that Avista should never recover these costs, but rather that these costs are not known and measurable at this time and should be considered in a later case. These negotiations are early in their process—and the Commission should allow time for this process to continue. This is because there is a possibility that Dry Ash will not need to be installed in exchange for firm closure dates at Colstrip. Avista acknowledges that it has not even "conducted an analysis of investigating the benefits of an earlier retirement including the avoidance of certain capital projects."[233] The Commission should allow Avista and the other Colstrip Owners more time to conduct such analysis to facilitate negotiations with the Plaintiffs of the 2016 AOC Settlement Agreement before considering whether to include the projected Dry Ash costs into electric rates.

89 To another point, if Avista has not even considered an early closure of Colstrip to avoid the installation of the $39.9 million Dry Ash capital addition, it is questionable if the Company has met its evidentiary burden to establish that Dry Ash is prudent and not life extending.[234] Avista's position seems to be that, because the 2016 AOC Settlement Agreement mandates the installation of Dry Ash, the capital addition is not life extending.[235] In other words, it seems that

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[231] Gomez, Exh. DCG-36C at 1.
[232] Thackston, Exh. JRT-12T at 31:18-19.
[233] Gomez, Exh. DCG-7.
[234] In the 2019 Avista GRC settlement, Avista agreed to not support capital expenditures (beyond routine capital maintenance) at Colstrip that will extend the plant's operational life beyond December 31, 2025. It was also agreed that all Colstrip capital expenditures after December 31, 2018, would be subject to a prudence determination in future rate proceedings. 2019 Avista GRC Order at 19–20, ¶ 51.
[235] Thackston, Exh. JRT-12T at 35:12-16.

Avista believes the mandate in the 2016 AOC Settlement Agreement is prima facie evidence that Dry Ash is not life extending.[236] This is despite Avista explaining how the usefulness of Dry Ash will extend beyond 2025.[237] In testimony, Staff has explained that the record is insufficient to establish that Dry Ash is not life extending:

> The Dry Ash Disposal System is not a routine capital maintenance cost needed for prudent operation until December 31, 2025. Rather, the Dry Ash Disposal System is a massive capital addition required for Colstrip Unit 3 and 4's continued operations well beyond December 31, 2025.
>
> The only apparent argument that the Dry Ash Disposal System is not life extending—is that the current conversion date falls before the CETA deadline to remove certain coal cost from electric rates. . . . However, the conversion date can be moved and is currently the subject of possible negotiations that could result in the deadline to install Dry Ash being extended.[238]

90 Consequently, the projected $6 million in Dry Ash capital costs should not be included in rates because the pro forma amounts are not *known and measurable*. Given the uncertainties of the projected costs, Avista acknowledging that the projected costs could increase, the fact the entirety of the projected costs have yet to be approved, and ongoing settlement discussions among the parties to the 2016 AOC Settlement agreement, it is uncertain if Avista will incur the $6 million in projected costs. Furthermore, waiting for these costs to be incurred could also facilitate a better record as to whether these costs are prudent and not intended to extend the life of Colstrip past 2025—as mandated by Avista in the 2019 GRC settlement.[239] Accordingly, the Commission should wait until the Dry Ash costs are incurred by Avista before considering whether to include these costs in electric rates.

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[236] Thackston, Exh. JRT-12T at 35:12–16 ("Fourth, this project is consistent with the 2019 Commission Order prohibiting the Company from making life extending capital expenditures at Colstrip. This project must be in place by 2022 to satisfy legal requirements, *<u>even though its usefulness does extend beyond 2025</u>*.") (emphasis added). *See also*, Thackston, Exh. JRT-12T at 32:7-8 ("[T]he project is required for the plant to run past July 1, 2022, regardless of when the plant is shut down.").
[237] Thackston, Exh. JRT-12T at 35:12-16.
[238] Gomez, Exh. DCG-1CT at 15:15-16:7.
[239] 2019 Avista GRC Order at 19–20, ¶ 51.

D. Avista Has Failed To Show The SmartBurn Investment Was Necessary

91 The Commission should determine that Avista's decision to invest in SmartBurn was imprudent. While Avista is correct that the issues in this case must be decided based on the record developed in this docket, Staff's fundamental concern regarding SmartBurn is the same as in the most recent PSE GRC: that there was no need for the investment in SmartBurn. Although the Company has provided additional contemporaneous documentation regarding its decision to invest in SmartBurn, that documentation does not establish that there was a regulatory or other need for SmartBurn. To the contrary, the additional evidence shows that Avista knew that SmartBurn was unnecessary to meet the Company's regulatory obligations and that the Company did not reevaluate the need for SmartBurn after the decision to invest was made. The Commission should find, as it did in the PSE GRC, that the decision to invest in SmartBurn was speculative and imprudent.[240]

92 Avista states that it installed SmartBurn in order to achieve "environmental benefits through NOx reduction," and to "help mitigate the cost of later [Selective Catalytic Reduction (SCR)] additions."[241] The Company explains that it assumed that additional NOx reduction requirements, including SCR, would be required at Colstrip based on the 2012 Federal Implementation Plan (FIP) for Montana and the Regional Haze Rule.[242] However, neither of these sources establish a need for SmartBurn.

First, as explained in Staff's testimony, the FIP deferred evaluation of additional NOx

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[240] 2019 PSE GRC Order at 61, ¶ 197 ("We agree with Staff and AWEC that PSE failed to demonstrate that the costs related to PSE's SmartBurn investment were prudently incurred. . . . Accordingly, we agree with Staff that the Company (1) failed to demonstrate that SmartBurn was necessary[.]"); 61, ¶ 198 ("We determine that ratepayers should not be required to compensate the Company for the costs of its litigation strategy or for its erroneous speculation.").
[241] Thackston, Exh. JRT-1T at 59:3-5.
[242] Thackston, Exh. JRT-1T at 58:8-13; 65:10-16.

controls at Colstrip until a future review period.[243] Given that the Environmental Protection Agency did not impose any additional NOx control requirements as part of the 2012 FIP, the FIP does not establish that SmartBurn was necessary for regulatory compliance.

93 Second, Avista has not shown that investing in SmartBurn was necessary to comply with Regional Haze Rule NOx requirements. As part of its 2017 GRC testimony on SmartBurn, Avista stated "**there is not yet an annual legal requirement under the Regional Haze Program to reduce NOx output**."[244] Similarly, an internal Avista email dated ████ contains an attachment titled "████" with the following exchange:

> ████[245]

Therefore, at the time Avista decided to install SmartBurn, the investment was not required by either the FIP or the Regional Haze Rule.

94 Furthermore, internal communication from Avista shows that the Company did not attempt to reevaluate the need for SmartBurn after making the decision to invest. As noted in Staff's testimony, ████.[246] Additionally, the attachment to an internal email, "████," includes the following:

> ████

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[243] Gomez, Exh. DCG-1CT at 42:12-44:3.
[244] Thackston, Exh. JRT-25X at 11:12-14 (emphasis added).
[245] Thackston, Exh. JRT-15C at 9, Attachment "████" at 1 (emphasis added).
[246] Gomez, Exh. DCG-1CT at 46:15-48:4. *See also*, Gomez, Exh. DCG-30C.

[247]

Avista did not attempt to actively monitor the need for the SmartBurn investment during the implementation of SmartBurn.

95 Finally, while the Company claims that the Regional Haze Rule may require additional NOx reductions in the future, that possibility is speculative at best. Although Avista maintains that the glide path may be changed or adjusted in the future, it also notes that other events can influence whether the glide path will be modified, such as the closure of regional plants like the J.E. Corette Coal Plant in 2015.[248] Indeed, :

[249]

96 Furthermore, while it is possible that the Regional Haze Rule could require additional NOx reductions at some point in the future before the rule's conclusion in 2064, under Washington State's Clean Energy Transformation Act, Avista must remove coal-fired resources from its allocation of electricity by 2025.[250] Avista has not shown that the Regional Haze Rule is

[247] Thackston, Exh. JRT-15C at 9, Attachment "" at 2 (emphasis added).
[248] Thackston, Exh. JRT-25X at 11:14-17.
[249] Thackston, Exh. JRT-15C at 20 (emphasis added).
[250] *See* Thackston, Exh. JRT-1T at 59:20-21; Exh. JRT-15C at 20; RCW 19.405.030(1).

likely to result in additional NOx restrictions by 2025, especially given [redacted]

[redacted].[251]

97 Avista devotes much of its rebuttal testimony on SmartBurn to explaining newly disclosed analyses that were provided for the first time in discovery in this case. However, these analyses do not establish a need for SmartBurn with respect to either the FIP or the Regional Haze Rule. Therefore, the cost/benefit analyses comparing the cost of SmartBurn is irrelevant, because in the absence of a need, the least-cost solution is to take no additional action and incur no additional costs.

98 To the extent that the Commission does consider the additional analyses, the Commission should afford them minimal weight. As explained in Staff's testimony, these additional analyses should have been disclosed in response to prior Sierra Club data requests in the last Avista GRC.[252] In rebuttal testimony, Avista stated that it "acknowledges that the information was not as complete as it could have been when put forth in pre-filed testimony," without further explanation.[253] Additionally, some of the material provided, such as the [redacted] [redacted], are partially redacted, such that neither the Commission nor the parties are able to fully evaluate the analyses contained in that report.[254]

Avista also claims that "[i]t would be especially unfair to add yet another $2.4 million write-off . . . for a project [(SmartBurn)] that was prudent when the decision was made."[255] However, the Company's argument presumes that the decision to invest in SmartBurn was

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[251] Additionally, it appears that Avista [redacted] [redacted]. *See,* Thackston, Exh. JRT-1T at 60:20-29; Exh. JRT-25X at 11:15-17.
[252] Gomez, Exh. DCG-1CT at 48:12 n.93.
[253] Thackston, Exh. JRT-12 at 20:3-4.
[254] Thackston, Exh. JRT-13C.
[255] Thackston, Exh. JRT-12 at 4:15-16.

prudent. For the reasons explained above, the Commission should determine that the investment in SmartBurn was unnecessary and therefore imprudent. Additionally, as a matter of policy, it would be all-the-more unfair to pass the costs of an unnecessary, speculative investment to the ratepayers, who have no control over the Company's capital investment strategy.

99 Based on this record, the Commission should determine that Avista has not shown a need for SmartBurn, has not shown that it reasonably monitored the need for SmartBurn during its implementation, and has not shown that SmartBurn will be required in the future with any certainty. As with PSE, the Commission should disallow SmartBurn as imprudent.

VIII. OTHER ADJUSTMENTS

A. Uncontested Adjustments

100 Staff no longer contests Avista's Adjustment 3.06, employee benefits. Avista initially projected an increase in employee benefits that was not credible.[256] On rebuttal, Avista proposed using year-end 2020 actual amounts,[257] and Staff agrees with this change.

101 Regarding Avista's Adjustment 3.05, executive labor expense, the Company did not provide helpful responses to Staff discovery[258] and Staff could not justify the salary increases in the adjustment.[259] On rebuttal, the Company provides a more informative explanation of the adjustment, and Staff no longer contests the adjustment reflecting 2020 actual salary levels.[260]

102 Avista projects property tax expense in its Adjustment 3.09 and, as the Company admits, has overestimated the expense in the past in its initial filings.[261] During the pendency of this case, Avista also updated its estimate—twice—with each update lower than the previous estimate.[262]

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[256] Huang, Exh. JH-1T at 15:17-16:3.
[257] Andrews, Exh. EMA-6T at 36:41-37:2.
[258] *See* Huang, Exh. JH-5.
[259] Huang, Exh. JH-1T at 13:13-22.
[260] *See* Andrews, Exh. EMA-6T at 63:8-11.
[261] *See* Andrews, Exh. EMA-6T at 81:1-3.
[262] *See* Andrews, Exh. EMA-6T at 80:13-17.

Staff recommends using the latest estimate, and that is provided in Avista's rebuttal case.[263]

B. Contested Adjustments

103 In its initial filing Avista proposed increasing insurance expense, through Adjustment 3.07, by more than 150 percent over the current level.[264] This adjustment is based on an estimate. As Staff witness Huang documented thoroughly in testimony, Avista has a history of overestimating its level of insurance expense.[265] Avista provides updated costs on rebuttal,[266] but these still involve an estimate of rate year expense. Company witness Andrews's assertion, in support of the adjustment, that insurance expense increased 89 percent from 2019 to 2021[267] is not reassuring. While 2021 is more recent than 2019, Staff does not believe a projection based on these numbers is necessarily more reliable in this case. The Company's belief about future insurance expense has been off, time and time again—recall that, most recently, they initially projected an increase in insurance expense of 150 percent. Accordingly, to ensure ratepayers do not overpay, the Commission should reject Avista's Adjustment 3.07 and use the Company's test year level of insurance expense in the revenue requirement.

104 Avista's IS/IT expense estimates have been off for years, to the ratepayers' detriment.[268] In this case, Avista's Adjustment 3.08, IS/IT expense, adds an increase of nearly 30 percent over test year expense, based on projections.[269] Staff carefully analyzed Avista's estimated IS/IT expense, compared with actuals, over a period of five years.[270] Avista's projections for IS/IT expense over this period form a pattern of overestimation.[271] Because of this pattern, the

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[263] *See* Andrews, Exh. EMA-6T at 80:8-10.
[264] Huang, Exh. JH-1T at 19:10-13.
[265] Huang, Exh. JH-1T at 20:1-24:4; Exh. JH-7 at 3.
[266] *See* Andrews, Exh. EMA-6T at 68:3-7 (final numbers were provided after Staff filed response testimony).
[267] Andrews, Exh. EMA-6T at 69:11-12.
[268] Huang, Exh. JH-1T at 28:7-10.
[269] Huang, Exh. JH-1T at 25:1-9.
[270] *See* Huang, Exh. JH-1T at 28:7-10.
[271] Huang, Exh. JH-1T at 28:7-10.

Commission should not rely on Avista's estimates and should reject Avista's IS/IT adjustment.

105 Avista contends that Staff compares inapposite time periods and data and that Staff's analysis is therefore invalid.[272] In contrast, witness Huang compares traditional ratemaking time periods, in that she compares the pro forma expense (the estimate) in one case with the subsequent case's test year (the actual costs), which each involve a year's worth of IS/IT expense.[273] Avista, however, appears to cherry pick timeframes that, while they may show under recovery, do not reflect the traditional ratemaking metrics that Staff witness Huang compares. For example, where witness Huang compares the projected pro forma expense from Avista's 2014 rate case to Avista's actual 2014 IS/IT costs, demonstrating the pro forma adjustment was overstated, Avista witness Andrews compares pro forma amounts from the 2014 case to *two years* of actuals between 2012 and 2014, which yields a purported under recovery.[274] While there may be certain times of the year that involve more IS/IT outlays than others, five years' worth of data showing a steady pattern of overestimation smooths and outweighs differences in which different months may be included.

106 Avista further supports its assertion that Staff's analysis of the insurance expense adjustment mismatches data by pointing out that the Company changed its data inputs to the adjustment in 2019.[275] This point, however, fails to explain the continuation of the pattern of overestimation from 2019 to 2020. Witness Huang shows that the projected 2020 pro forma expense was $15.4 million, while the 2019 actual expense was $13 million, which represents an overestimation of more than $2 million. In conclusion, the most reliable number is Avista's actual, test-year level of IS/IT expense, and the Commission should use that.

[272] Andrews, Exh. EMA-6T at 74:18-20.
[273] *See* Huang, Exh. JH-8.
[274] Andrews, Exh. EMA-6T at 77, Table No. 22.
[275] Andrews, Exh. EMA-6T at 78:10-15.

107 Finally, the Commission should reject Avista's Adjustment 3.04, which includes a union wage increase based on a contract that has not been signed.[276] Without a contract, these costs are speculative, not known and measurable, and Staff's adjustment appropriately removes them.[277]

IX. RETURN OF TAX BENEFITS

108 Recently, Avista made a tax change and the Commission approved an accounting petition for the Company, making available more than $86 million in tax benefits to be returned to ratepayers.[278] These tax benefits should be refunded to customers in a manner and timeframe that supports transparency and intergenerational equity. Staff recommends returning the EDIT during the rate year (that is, over 12 months) on a separate schedule and spreading out the return of the deferred ADFIT over the approximate lives of the underlying assets.

109 The total amount of the deferred tax benefits up to and including the estimate for 2020 is $58.1 for Washington electric service and approximately $28.2 million for Washington natural gas service.[279] EDIT for electric service is $10.3 million and $4.8 million for gas service; ADFIT is $47.9 million for electric and $23.4 million for gas.[280]

A. To Facilitate Intergenerational Equity And To Be Consistent With The Different Natures Of EDIT And ADFIT, EDIT Should Be Returned Immediately, And ADFIT Should Be Returned Over The Approximate Life Of The Assets

110 While all parties agree that the tax benefits must be returned to customers, there is no agreement on the timeframe for return and only Staff proposes different return timeframes for the two types of tax benefits, EDIT and ADFIT. EDIT and ADFIT are conceptually different and

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[276] *See* Andrews, Exh. EMA-6T at 13-15.
[277] Huang, Exh. JH-1T at 12:10-18.
[278] *In the Matter of the Petition of Avista Corporation d/b/a Avista Utilities for an Accounting Order Approving Accounting Change to Flow-Through Method for Regulatory Purposes for Federal Income Tax Expense Associated with Industry Director Directive No. 5 and Meters; and Defer Benefits Associated with the Change in Tax Expense and Future Annual Benefits*, Dockets UE-200895 & UG-200896, Order 01 (March 11, 2021) (Tax Accounting Order).
[279] Andrews, Exh. EMA-6T at 113:14-114:2.
[280] Erdahl, Exh. BAE-1T at 11, Table 1.

merit different return timeframes. EDIT represents "excess" amounts that customers paid and that Avista will never need for its tax expense.[281] EDIT should be returned to customers as quickly as possible in order to place the amounts in the hands of the those who overpaid them. Waiting too long to return EDIT exacerbates intergenerational inequities.[282] In the event that the corporate income tax rate changes during the rate year, this will not impact the EDIT or ADFIT that has been deferred and is being returned because the tax benefit has already flowed through and will not change.

111 Citing cash flow issues, Avista does not want to return more tax benefits up front than the revenue it will be authorized to collect in the rate year and it insists on a particular return cutoff for this amount not to extend beyond two years (while the remainder and subsequently deferred benefits would be returned over 10 years).[283] This is not a principled linkage. The tax benefits belong to customers and must be returned for the benefit of customers. The interest that customers have in receiving refunds is at least as great as Avista's interest in easing cash flow.

112 Avista finds fault with Staff's recommendation to return ADFIT over the approximate lives of the underlying assets on the basis that these lives can no longer be determined exactly.[284] Avista initially identified the useful life of meters as 15 years.[285] On rebuttal, Avista indicates that actually there currently are no meters with *remaining* lives of 15 years, that some have remaining lives of six years and that meters installed in 2019 have lives of 13 years.[286] It is not necessary, however, to determine the individual vintage and life of every meter; intergenerational inequities can be ameliorated by approximating the useful life of assets and offsetting the burden

[281] Erdahl, Exh. BAE-1T at 13:6-7.
[282] Erdahl, Exh. BAE-1T at 13:6-11.
[283] *See* Andrews, Exh. EMA-6T at 114:5-115:2.
[284] *See* Andrews, Exh. EMA-6T at 114:5-115:2.
[285] Andrews, Exh. EMA-6T at 117:9-11.
[286] Andrews, Exh. EMA-6T at 117:14-20.

of some of the depreciation expense with the tax benefits that flowed from the same group of assets. Because 13 years appears to represent the outer bound of the useful lives of the meters, Staff recommends returning the deferred ADFIT associated with meters over 13 years.[287]

113 Avista makes a similar argument regarding IDD #5, that 34 years does not represent the average remaining book life of IDD # 5 assets. Again, it is consistent with the principle of avoiding intergenerational inequities to apportion the tax benefits to customers over the full term of the 34 years that depreciation expense from some of these assets will be included in rates. Finally, Avista admits that, even though the underlying lives of meters and IDD #5 would not be calculated as under normalization, the Commission still can require return of the tax benefits over the periods Staff proposes.[288]

114 Public Counsel recommends that, after the deferred amount is drawn down to offset the first year's revenue requirement, the remaining amount should be amortized to continue to offset the revenue increase, which would result in refunds spread over seven to eight years.[289] AWEC advocates for returning the tax benefits over five years, in equal amounts, starting in the rate year.[290] These proposals, however, are not supported by the rate making principle of matching the benefit to the burden. Customers will be paying depreciation expense for up to 34 years but under the Public Counsel and AWEC proposals only those customers paying rates in the first five to eight years would receive the tax benefit matching this burden. This mismatch would cause intergenerational inequities.

115 Public Counsel and AWEC are concerned that Staff's recommendation to pass back

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[287] Staff had originally recommended 15 years (*see* Erdahl, Exh. BAE-1T at 12:10-12) but has changed its recommendation to 13 based on Avista's rebuttal testimony. *See* Andrews, Exh. EMA-6T at 117:18-19 ("a vintage 2019 meter has a remaining book life of 13 years as of December 31, 2020").
[288] Andrews, Exh. EMA-1T at 118:5-8.
[289] Crane, Exh. ACC-18T at 3:1-4.
[290] Mullins, Exh. BGM-11T at 3:20-23.

EDIT in the rate year will return too much at once and will result in a large rate increase once the EDIT is all refunded.[291] While it is true that customers will likely experience an increase in their rates once the EDIT has been returned, the more important principle is that customers do not need to be "protected" from a refund. They are due a refund, and they should receive all of the available EDIT now.

B. The Tax Benefits Should Be Returned On A Separate Schedule

116 The tax benefits should be returned on separate schedules (Schedule 76 for electric service and Schedule 176 for natural gas service).[292] Using a separate schedule appropriately separates return of the tax benefits from revenue requirement and allows the Commission to better track the refunds. None of the other parties contest this proposal.[293] Regarding how to calculate the refund amounts, Staff recommends spreading the tax benefits according to the rate base allocation for each customer class[294] but believes that the Commission could also select other rate spread methodologies for the return of the tax benefits and remain consistent with the public interest.

X. COST OF SERVICE, RATE SPREAD, AND RATE DESIGN

117 Avista's proposed rate design is reasonable and, with the exception of Schedule 25, is not contested. AWEC proposes an alternative design for the energy block rates in Schedule 25. Staff believes either AWEC's approach or Avista's is acceptable, and rate design will not be further discussed here. Avista's electric and natural gas cost of service studies are valid and produce parity ratios showing that rate spread must be adjusted to address cross-class subsidization. Staff proposes the only rate spread that moves the customer classes incrementally toward rate parity

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[291] Crane, Exh. ACC-18T at 4:16-19; Mullins, Exh. BGM-11T at 4:4-8.
[292] Erdahl, Exh. BAE-1T at 12:19-21.
[293] *See* Andrews, Exh. EMA-6T at 114:10-12; Mullins, Exh. BGM-11T at 2:16-20.
[294] Erdahl, Exh. BAE-1T at 12:22-23.

and does so in a way that is fair.

A. Avista's Electric Cost Of Service Study Is Valid

118 Avista's cost of service studies reasonably reflect the Company's cost of serving its customers and, with the exemptions received from the Commission,[295] comply with the Commission's cost of service rules in chapter 480-85 WAC. Accordingly, the Commission should accept both the electric and natural gas cost of service studies that Avista presents. In cross-answering testimony, Staff responds to Public Counsel's concerns with the natural gas cost of service study, and this issue will not be further briefed.[296]

119 In July of 2020, the Commission adopted rules to standardize the presentation of cost of service studies.[297] Under the new rules, general rate case filings must include a cost of service study that complies with the Commission rules in chapter 480-85 WAC.[298] In its order adopting the cost of service rules, the Commission makes clear that the rules require cost of service studies to use the methodologies set forth in the rule: "all cost of service studies filed with the Commission [are required to] be calculated using an embedded cost method with costs functionalized, classified, and allocated according to the methods outlined in Tables 1-4."[299] Tables 1-4 are codified at WAC 480-85-060(3).

120 Public Counsel objects to Avista's selection of resources in the Company's electric cost of service study, which amounts to an objection to the use of the renewable future peak credit (RFPC) methodology. WAC 480-85-060(3) requires the use of the RFPC methodology to classify generation resources, which Avista has done. The peak credit methodology compares a

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[295] *See Wash. Utils. & Transp. Comm'n v. Avista Corp.,* Order 01 (Nov. 25, 2020).
[296] Jordan, Exh. ELJ-1T at 4:15-5:2.
[297] *In Re Amending WAC 480-07-510 and Adopting Chapter 480-85 WAC Relating to Cost of Service Studies for Electric and Natural Gas Investor-Owned Utilities,* Dockets UE-170002 & UG-170003, General Order R-599 (July 7, 2020) (COS Order).
[298] WAC 480-07-510(6).
[299] COS Order at 11, ¶ 41.

base load type generating resource unit to a peaker-type generating resource unit, to calculate the ratio of demand to energy.[300] This demand to energy ratio, or "split," is used to allocate generating costs across the customer classes.[301] The RFPC methodology uses renewable resources to calculate the demand energy split.[302]

121 Public Counsel objects to the resources the Company selected for its electric cost of service study in part because Avista does not plan to place any renewable peaker-type resources into service for a number of years.[303] The Commission, however, explicitly selected the RFPC methodology,[304] which means that utilities must present cost of service studies incorporating renewables into the demand and energy ratio. It was perfectly reasonable for Avista to use the lithium ion battery as the peaker for the study because it is a renewable peaker and it is in Avista's Integrated Resource Plan (IRP). Avista does not have any renewable peaker-type resource in its IRP for the rate year or before that,[305] so Public Counsel's apparent expectation that the cost of service study reflect resources in service or soon to be in service[306] is unrealistic. Staff witness Jordan explained that even the traditional peak credit method incorporates hypothetical values, based on an IRP, to calculate the demand energy split.[307] And finally, the Commission recognizes that a cost of service study is always forward looking. In its COS Order, the Commission stated, "A properly conduced cost of service study is forward looking," and "we maintain the Commission's forward-looking perspective and adopt, for the classification of electric generation, the RFPC method."[308] Avista's use of a renewable peaker resource that it

[300] Jordan, TR. 310:10-311:1.
[301] Jordan, TR. 310:18-311:1.
[302] Jordan, TR. 320:17-19.
[303] *See* Watkins, Exh. GAW-1T at 13:8-12.
[304] COS Order at 12, ¶ 44.
[305] Jordan, TR. 338:18-24.
[306] *See* Watkins, Exh. GAW-1T at 9:19-22.
[307] Jordan, TR. 321:22-25.
[308] COS Order at 12, ¶ 44.

plans to install in the future but that will not be in service during the rate year is reasonable and does not invalidate the methodology.

122 Public Counsel's other objection to the lithium ion battery also rests on Avista's plan to install this resource 20 years from now rather than sooner. Public Counsel is concerned that the battery cost used in the cost of service study is inflated because Avista expects the cost of this resource to decline over time.[309] While it is true that the costs used in the study are estimates, Avista's calculation of *current* costs from the estimates available in its IRP[310] is appropriate because the cost of service study, even with hypothetical resources, must reflect the costs for the rate year. And, as Public Counsel admits, Avista based the current cost on publicly available pricing forecasts as well as a review by an established consulting and construction company.[311] Because the basis of the estimates that Avista used for its costs are reliable and because Avista used rate year costs, Avista's battery cost inputs were reasonable.

123 Public Counsel criticizes the study input for base-load generation as well. For the base-load renewable resource, Avista based the costs on a wind purchased power agreement (PPA). Public Counsel disagrees with this choice because a PPA is not part of rate base and therefore, according to Public Counsel, should not be used for cost allocation purposes.[312] Contrary to Public Counsel's assertions, however, Avista's incorporation of this input into the study was reasonable. Avista performed calculations to convert the PPA to a rate base input. [313] Because Avista used costs that had been adjusted to be a proxy for a wind turbine, the allocations based on those costs are valid.

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[309] Watkins, Exh. GAW-1T at 13:3-7.
[310] *See* Knox, Exh. TLK-1T at 16:18-20 ("The renewable future peak credit method compares the cost of battery storage (demand) to wind turbine (energy) derived from the Company's 2020 IRP at 2022 cost assumptions"); Jordan, TR. 321:9-11.
[311] *See* Watkins, Exh. GAW-1T at 12:6-7.
[312] Watkins, Exh. GAW-1T at 13:8-12.
[313] *See* Jordan, TR. 326:23-327:12.

B. Rate Spread

124 The Commission should begin to address the parity issues in Avista's current rate spread for both its electric service and natural gas service in this case in the event that the Commission orders a revenue increase. Not only have residential rates long been subsidized by other customer classes,[314] but this case, with the evidence supporting a small rate change, presents an opportunity to start correcting the subsidization with minimal impact on residential customers. Staff provides rate spreads that begin to remedy the cross-class subsidization, and the return of the tax benefits can help the medicine go down. If, however, the Commission orders a rate decrease, which Staff's evidence supports for Avista's electric service, Staff recommends spreading the decrease on an equal percent of margin among customer classes.

125 The primary principle underlying rate spread is to reflect the cost of serving each class.[315] The relationship between the cost of service and the revenue collected from each class ideally approaches a one-to-one relationship, or parity.[316] If a cost of service study shows that one or more classes of customers have a parity ratio that diverges from 1.00, this divergence can be remedied by spreading a greater or lesser amount of the revenue change to these classes. Before correcting rate spread to move toward parity, however, the Commission may review a variety of factors. Specifically, the Commission has considered fairness, perceptions of equity, economic conditions in the service territory, gradualism, and rate stability.[317] In this case, these factors weigh in favor of adopting Staff's rate spread proposal and making progress toward rate parity.

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[314] Jordan, Exh. ELJ-1T at 14, Table 5 ("Historical Electric Rate Spread").
[315] *See Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.,* Dockets UE-111048 & UG-111049, Order 08, 125, ¶ 351 (May 7, 2012).
[316] *See* 2014 Pac. Power GRC Order at 84, ¶ 197.
[317] *Id.* at 84, ¶ 197.

1. Avista's electric and natural gas parity ratios produce unacceptable levels of cross-class subsidization.

126 With regard to Avista's electric service, the parity ratio for the residential class is 0.82.[318] The effect is that for every dollar of costs assigned to a residential customer, that customer pays only 82 cents, while General Service customers and Large General Service customers pick up the bulk of the rest.[319] A parity ratio that diverges from 1.00 by an amount between 10 and 20 can be considered unreasonable cross-class subsidization.[320] Residential electric service customers fall below 1.00 by 18 points.

127 With regard to Avista's gas service, its Large General Service and Interruptible Sales Service have parity ratios of 1.70 and 1.40 respectively.[321] Parity ratios that fall above or below 1.00 by 40 or more should be considered to evidence grossly excessive cross-class subsidization.[322] Large General Service and Interruptible Sales Service are paying 70 cents and 40 cents extra respectively for every dollar of costs assigned to them.[323]

2. Avista's proposals perpetuate cross-class subsidization and are unfair.

128 The rate spreads that Avista proposed in its direct testimony, which spread rates on an equal percent of margin, and which other parties support (Public Counsel and The Energy Project) or do not object to (AWEC), do not address the long-standing cross-class subsidization because they do not adjust the rate spread to move toward parity. Avista proposes alternative rate spreads in the event the Commission approves a lower revenue requirement than the Company's.[324] The alternative involves assigning significant portions or all of the rate increase to

[318] Jordan, Exh. ELJ-1T at 10, Table 2 ("Electric Parity Ratios").
[319] *See* Jordan, Exh. ELJ-1T at 15:2-4.
[320] Jordan, Exh. ELJ-1T at 10, Table 1 ("Parity Ratio Ranges").
[321] Jordan, Exh. ELJ-1T at 10, Table 2 ("Natural Gas Parity Ratios").
[322] Jordan, Exh. ELJ-1T at 10, Table 1 ("Parity Ratio Ranges").
[323] Jordan, Exh. ELJ-1T at 21:12-14.
[324] Miller, Exh. JDM-8T at 3:16-19 (electric) and 6:2-4 (natural gas).

only certain classes.[325] While Avista's alternative rate spreads would address the unreasonable and grossly excessive divergences from parity, they also would be unfair because some classes might not pay any increase.[326] In contrast, Staff's rate spread proposals assign a portion of the rate spread to each class. Avista, on rebuttal, supports Staff's rate spread proposals, if the Commission orders revenue requirements that are lower than the amount the Company requests.[327]

129 Another proposal of Avista's is also problematic. Specifically, Avista proposes spreading the tax benefit refund to offset the rate increase exactly for each class.[328] This proposal has the potential to paper over any cross-class subsidization and, in so doing, perpetuate it.

3. The rate spread correction factors support the Staff rate spread proposals.

130 Staff's rate spread proposals are fair and equitable, account for economic conditions, are gradual, and do not offend rate stability. In short, they are consonant with the factors that the Commission may consider in determining whether to adjust rates to move toward parity. Staff's proposals spread at least a portion of the increase to every customer class, which is fair. In addition, they are equitable because they spread the rate change in ways that begins to relieve those customers burdened by the long-standing subsidization.[329]

131 At the same time, the proposals do not leap toward parity. Rather, the Staff rate spreads represent a very gradual movement of parity ratios. To land in the reasonable range of parity, electric residential customers would need to pay a relative increase of 1,500 percent.[330] To even

[325] Miller, Exh. JDM-1T at 6:23-7:6 (electric) and 16:18-22 (natural gas).
[326] Jordan, Exh. ELJ-1T at 12:18-19 and 20:7-11.
[327] Miller, Exh. JDM-8T at 4:10-5:2 (electric) and 6:19-7:6 (natural gas).
[328] Jordan, Exh. ELJ-1T at 11:19-21.
[329] Jordan, Exh. ELJ-1T at 14:18-22.
[330] Jordan, Exh. ELJ-1T at 16:6-8. Note that Staff's analysis is based on the Staff revenue requirement at the time of responsive testimony, that is, before the settlement and before the power cost update. *See* Jordan, Exh. ELJ-1T at 13:2-3.

move the residential class off of its current parity ratio would require residential customers to bear a relative increase of at least 182 percent.[331] Given the economic hardships that some have faced due to the pandemic, Staff's proposed relative increase of only 145 percent for residential electric customers is modest and appropriately reflects current economic conditions.[332] Staff's proposed adjustment to rate spread for natural gas customers is also gradual, albeit more significant. Moving the large general service class to the range of reasonableness would require a relative rate reduction of 600 percent.[333] As with electric service, in consideration of the economic conditions resulting from the pandemic, Staff's recommended relative *increase* of 25 percent is appropriately incremental and tailored to the economic conditions of the day.[334]

132 In this case there is a significant opportunity to change rates and move a little closer to parity without a meaningful impact on residential customers. With the incorporation of Avista's recent power supply update, together with the adjustments driving the revenue requirements proposed by Staff (and also Public Counsel and AWEC), the appropriate change to base rates is small. And should the Commission order an increase for electric service or a larger increase for natural gas service than Staff recommends, the return of the tax benefits can cushion the move toward parity for residential customers. Given these circumstances, the remaining factor, rate stability, need not be an issue.

133 Importantly, if the Commission orders a base rate *decrease*, which is called for in Staff's latest electric revenue requirement, the rate spread that Staff proposed in testimony for that service will exacerbate rather than remedy cross-class subsidization. With a rate decrease, the Commission should spread rates on an equal percent of margin basis.

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[331] Jordan, Exh. ELJ-1T at 18:7-10.
[332] *See* Jordan, Exh. ELJ-1T at 13, Table 4 ("Staff Proposed Electric Rate Spread").
[333] Jordan, Exh. ELJ-1T at 22:7-9.
[334] *See* Jordan, Exh. ELJ-1T at 23:3-5.

XI. CONCLUSION

134 Based on the foregoing argument and on Staff's testimony on file in the case and at hearing, the Commission should approve a revenue requirement *decrease* for Avista's electric service of $1.1 million and an *increase* of $6.1 million for Avista's natural gas service.

Respectfully submitted,

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