

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION,

Respondent

DOCKETS UE-240006 & UG-240007  
(Consolidated)

COMMISSION STAFF'S MOTION  
FOR PARTIAL SUMMARY  
DETERMINATION

**I. INTRODUCTION**

1 Avista has filed tariff revisions that would raise the rates it charges for the provision of electric service in Washington.<sup>1</sup> That requested rate increase is driven in large part by a “portfolio forecast error” adjustment that Avista makes to add \$65.8 million to its pro forma power costs, as well as to its Energy Recovery Mechanism (ERM) baseline, to account for what the company describes as difficulties in accurately forecasting its power costs.

2 The Commission should summarily determine two issues with regard to the portfolio forecast error adjustment. First, the Commission should determine that Avista may not make the adjustment as part of its pro forma power cost adjustment, which reduces Avista’s alleged revenue insufficiency by \$42.183 million. The portfolio forecast error adjustment represents a kludge that Avista seeks to incorporate into rates to account for the possibility that actual costs in the rate year will be higher than what Avista currently forecasts. That is because the adjustment does not involve actual, forecasted costs that Avista has (or can) identify. Instead, any such costs, were they to materialize during the rate year, would result

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<sup>1</sup> Avista has also filed revisions to the tariffs governing its gas service, but this motion does not concern those.

from future, real-world events that are currently unknown and unknowable, unpredictable, and unquantifiable. The Commission has long rejected attempts by utilities or others to adjust test-year results of operations based on such events, and it should do no differently here.

3           Second, the Commission should determine that Avista may not incorporate the portfolio forecast error adjustment into the ERM baseline. The adjustment, in the context of the ERM, represents Avista's attempt to doubly insulate itself from potential variations in its power costs caused by unknown, unknowable, and currently unquantifiable events. That attempt malforms the ERM, results in an inequitable allocation of risk between the company and its ratepayers, and deadens the incentives to control power costs built into the ERM as it is currently structured, thus nullifying the public interest balance at the heart of the Commission's adoption of the ERM.

## **II. RELIEF REQUESTED**

4           Staff respectfully requests that, as relevant here, the Commission conclude that no material issue of fact exists with regard to the portfolio forecast error adjustment made by Avista and summarily determine that the company may not incorporate the adjustment into its pro forma power cost adjustment, and thus into its revenue requirement, or into its ERM baseline.

## **III. STATEMENT OF FACTS**

5           In January 2024, Avista filed a general rate case to revise its currently-effective tariff WN U-28, which prescribes the rates the company charges for the provision of electric service in Washington.<sup>2</sup> Avista alleges that several factors drove its request for rate relief.<sup>3</sup> It

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<sup>2</sup> Vermillion, Exh. DPV-1T at 23:2-16.

<sup>3</sup> See Vermillion, Exh. DPV-1T at 5:18-8:3.

lists its net power expense (NPE) as one of these, claiming that escalating power costs “contribut[ed] significantly to the incremental electric revenue requirements” at issue in the company’s rate case.<sup>4</sup>

6 Avista witness Scott Kinney provides the company’s rationale for, and quantification of, the portfolio forecast error adjustment that other witnesses work into the company’s power costs. Although Mr. Kinney testifies that Avista has erred in valuing its portfolio in recent filings, Mr. Kinney does not identify a specific event, or specific events, that will give rise to an additional \$65.8 million in costs above and beyond what Avista has forecasted. Indeed, Mr. Kinney’s testimony indicates that the company cannot do so. He explains that “[t]here are many driving forces of forecast error each year, but markets tend to be the greatest driver of forecast error.”<sup>5</sup> He further testifies that these multiple driving forces interact in complex ways, and often work at cross-purposes with regard to Avista’s power costs:

[g]enerally, one or two drivers are responsible for pushing forecast versus actual NPE in a direction up or down from authorized each year. The ‘big ticket’ items in 2022 and 2023 are different. 2022 witnessed an approximate 35% run-up in power prices that could have helped us with higher revenues. However, because natural gas prices were about 95% above the forecast, the relationship between electricity and natural gas fell, grossly dropping the value of our thermal fleet. The result of nearly doubling our natural gas fuel expense was a significant increase in error relative to the forecast; almost four times the error seen in 2021.

In 2023, the main driver is poor hydro conditions. Natural gas prices through October 2023 fell 6% from the forecast, but electricity prices fell almost double that amount, meaning our thermal fleet underperformed the forecast. But our lowest hydro years since the energy crisis of 2000-01 magnified the difference between the forecast and actual and resulted in our largest ever delta between portfolio forecast and actual costs.<sup>6</sup>

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<sup>4</sup> Vermillion, Exh. DPV-1T at 31:12-13.

<sup>5</sup> Kinney, Exh. SJK-1T at 68:15-16.

<sup>6</sup> Kinney, Exh. SJK-1T at 69:2-14.

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Mr. Kinney goes on to explain the difficulties the company faced in putting a dollar amount on the forecast error and how Avista attempted to quantify it. As he testifies:

[Avista] does not have a new rate filing annually. NPE is not reset every year, and the NPE forecast in rate proceedings has not always occurred at the same time or even been updated due to various choices by the parties. So, it is not possible to look at the historical record and determine the impacts of forecast error. It is therefore necessary to create a consistent and longer-term dataset valuing NPE over time to help illustrate its magnitude.<sup>7</sup>

To create that data set, Avista began by calculating two sets of numbers. The first, a “Forward (Forecast) Value,” valued various components of the company’s portfolio for each year of a group based on historical forward market prices.<sup>8</sup> The second, an “Actual Value,” valued those same portfolio components for those same years using actual index prices and operations.<sup>9</sup> The difference between the forecast and actual values for a given year yielded its forecast error.<sup>10</sup> Avista averaged the annual forecast error for the five years spanning 2018 through 2022 to produce its estimate of the portfolio forecast error, or \$65.8 million.<sup>11</sup>

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Avista witness Clint Kalich describes the company’s incorporation of the portfolio forecast error into its ERM baseline and power costs. Mr. Kalich’s Exhibit CGK-3 identifies the adjustments that Avista made to its modeled power cost results in order to calculate its pro forma power supply adjustment.<sup>12</sup> That exhibit lists the portfolio forecast error

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<sup>7</sup> Kinney, Exh. SJK-1T at 67:1-5.

<sup>8</sup> Kinney, Exh. SJK-1T at 67:7-12.

<sup>9</sup> Kinney, Exh. SJK-1T at 67:8-17.

<sup>10</sup> Kinney, Exh. SJK-1T at 67:15-17.

<sup>11</sup> Kinney, Exh. SJK-1T at 68:7-12.

<sup>12</sup> See also Kalich, Exh. CGK-1T at 24:1-6 (“CGK-3 identifies non-modeled [Net Power Expense] items. These are expenses and revenues common to our historical filings and relate to fuel, transmission, and other miscellaneous items associated with our power supply business. In addition to these, I have added a single line item in the exhibit entitled ‘Forecast to Actual Market Adjustment’ to reflect the \$65.8 million portfolio forecast error detailed in Mr. Kinney’s testimony.”).

adjustment as a reduction to the revenues booked into FERC Account 447 (Sales for Resale).<sup>13</sup>

9 Avista incorporates the pro forma power supply adjustment that Mr. Kalich testifies about into its revenue requirement through the testimony of witness Kaylene Schultz. Ms. Schultz identifies the pro forma power adjustment for the first rate year as Adjustment 3.00P,<sup>14</sup> which she made under the direction of Mr. Kalich.<sup>15</sup> Eliminating the portfolio forecast error adjustment reduces Avista's as-filed revenue deficiency from \$77.067 million to \$34.884 million.<sup>16</sup>

10 That Mr. Kalich incorporated portfolio error adjustment into Account 447 has consequences for Avista's ERM. The ERM<sup>17</sup> is "an accounting mechanism which allows the difference between certain actual and 'baseline' power costs to be deferred on an annual basis, and allows Avista to file true-up rate surcharges to recover or credit deferral balances when costs vary beyond identified thresholds."<sup>18</sup> The baseline and actual costs are determined by summing the forecasted (for baseline) or actual (for actual) expenses booked in FERC Accounts 555 (Purchased Power), 501 (Thermal Fuel), and 547 (Fuel) and then subtracting the revenues booked in Account 447 (Sales for Resale).<sup>19</sup> Accordingly, incorporating the portfolio forecast error as a reduction to the sales revenue in Account 447 thus elevates the ERM's baseline in addition to increasing Avista's revenue requirement.<sup>20</sup>

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<sup>13</sup> Kalich, Exh. CGK-3.

<sup>14</sup> Schultz, Exh. KJS-1T at 50:18-51:6.

<sup>15</sup> See Schultz, Exh. KJS-1T at 50:18-22.

<sup>16</sup> Decl. of Kristen Hillstead at 2 ¶ 5.

<sup>17</sup> See generally *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket No. UE-011595, Fifth Supp. Order (June 18, 2002).

<sup>18</sup> *In re Petition of Avista Corp.*, Docket UE-061411, Order 04, 2 ¶ 5 (Dec. 26, 2006).

<sup>19</sup> Kalich, Exh. CGK-1T at 31:13-15.

<sup>20</sup> See Kalich, Exh. CGK-1T at 31:13-15.

#### IV. STATEMENT OF ISSUES

11           Should the Commission conclude as a matter of law that Avista may not incorporate the \$65.8 million “portfolio forecast error” adjustment into its pro forma power cost adjustment, and thus into its revenue requirement, or into its ERM baseline?

#### V. EVIDENCE RELIED UPON

12           Staff relies upon the testimony and exhibits of Clint G. Kalich, Scott J. Kinney, and Kaylene J. Schultz filed by Avista in this docket, as well as the declaration of Kristen Hillstead, filed concurrently with this motion.<sup>21</sup>

#### VI. ARGUMENT

13           The Commission should reject Avista’s attempt to include \$65.8 million for any portfolio error adjustment into its revenue requirement through its pro forma power cost adjustment as a matter of law based on its long-held standards for pro forma adjustments. It should also reject Avista’s attempt to incorporate the portfolio forecast error into its ERM baseline as a matter of law given the arbitrary nature of the adjustment and the public interest considerations undergirding the ERM.

14           The Commission has long refused to allow utilities to pro form expenses or revenues into rates where the utility cannot show that the adjustment involves known events and measurable dollar amounts; it has similarly denied pro forma adjustments where the utility fails to show that other factors will not offset the adjustment’s impact on revenue requirement. And the Commission has signaled that it holds to those principles, even with recent amendments to its authority. Avista’s own testimony indicates that it cannot identify

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<sup>21</sup> Staff asks the Commission to accept as true for the limited purpose of deciding whether to grant staff summary determination on this issue the cited and quoted portions of Mr. Kalich’s, Mr. Kinney’s, and Ms. Schultz’s testimony and exhibits.

the event or events that will give rise to any error, and thus cannot document with any specificity the actual rate-year costs that Avista purports will give rise to a \$65.8 million variance between power cost actuals and what Avista currently forecasts for the rate year. The company's own testimony is devoid of any specific evidence that it considered offsetting factors, and that testimony also strongly indicates that the real-world, rate-year interaction of the factors that result in variance between authorized and actual power costs can cancel out the dollar amount of the error. The Commission should adhere to its long-held precedent and reject the proposed adjustment as a matter of law because it does not reflect a known or measurable cost, and because Avista fails to show consideration of offsetting factors.

15           The Commission adopted the ERM to accommodate various interests in furtherance of the public interest. The ERM is meant to equitably allocate the variance risk—i.e., the risk that actual power costs will differ materially from the forecasted costs used to set the ERM baseline—between the company and its customers. It is also meant to incent Avista to control its power costs. Avista's forecast error adjustment arbitrarily elevates the company's power cost baseline, shifting the risk associated with power cost variances from Avista to its customers. That result is inequitable, can only deaden the incentives built into the ERM, and cannot be squared with the public interest balancing that led to the ERM's adoption.

**A.     Background Legal Principles**

**1.     Summary determination.**

16           The Commission's rules allow a party to "move for summary determination of one or more issues."<sup>22</sup> Summary determination is appropriate where "there is no genuine issue of

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<sup>22</sup> WAC 480-07-380(2)(a).

material fact and that the moving party is entitled to judgment as a matter of law” on the issue.<sup>23</sup> A moving party that does not have the burden of proof at hearing may show the absence of a genuine material issue of fact by “pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.”<sup>24</sup> If the nonmoving party cannot thereafter “make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at” hearing then the Commission should grant the motion.<sup>25</sup>

## 2. Ratemaking standards.

17 The Commission regulates, consistent with the public interest, as defined by the public service laws, the provision of utility service within Washington.<sup>26</sup> Under the public service laws, utilities’ rates and practices must be equitable, fair, just, reasonable, and sufficient.<sup>27</sup> The Commission has long understood this to mean, among other things, that rates must be “fair to customers and to the [c]ompany’s owners; just in the sense of being based solely on the record developed following principles of due process of law; reasonable, in light of the range of possible outcomes supported by the evidence[;] and . . . sufficient to meet the needs of the [c]ompany to cover its expenses and attract necessary capital on reasonable terms.”<sup>28</sup>

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<sup>23</sup> WAC 480-07-380(2)(a); CR 56(c).

<sup>24</sup> *Young v. Key Pharms.*, 112 Wn.2d 216, 225 & n.1, 770 P.2d 182 (1989); *see* WAC 480-07-380(2)(a) (the Commission looks to the standards applicable to a motion for summary judgment in superior court when ruling on a motion for summary determination).

<sup>25</sup> *Young*, 112 Wn.2d at 225 (internal quotation omitted); *see* WAC 480-07-380(2)(a) (standards for summary judgment serve as a guide for motions under WAC 480-07-380(2)).

<sup>26</sup> RCW 80.01.040(3).

<sup>27</sup> RCW 80.28.010, .425; *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, UG-210918, Order 24, 11-13 ¶¶ 53-57 (Dec. 22, 2022).

<sup>28</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-072300 & UG-072301, Order 12, 23-24 ¶¶ 66 (Oct. 8, 2008).

The Commission requires the use of the modified historic test year to set rates,<sup>29</sup> and this holds true even after legislative amendments to the public service laws in 2019 and 2021.<sup>30</sup> This means that any utility seeking rate relief must begin with the actual results of operations from a historic 12-month period.<sup>31</sup> The Commission requires that the ratemaking process begin with a historic test year because:

Costs, revenues, loads, and all other pertinent factors are known and can be measured with a high degree of certainty because they have, in fact, occurred. The practical value of the historical test year is that the cost, revenue[,], and plant data are available for audit, and the test year captures the complex relationships among the various aspects of utility costs, revenues, load, and other factors over a uniform period of time.<sup>32</sup>

Parties to a ratemaking proceeding may, however, adjust the test period results of operations to: (1) correct “defects or infirmities in” a utility’s “actual recorded results of operations”<sup>33</sup> or “adjust from an as-recorded basis to a basis that the commission accepts for determining rates,”<sup>34</sup> or (2) “give effect for the test period to all known and measurable changes that are not offset by other factors.”<sup>35</sup>

Avista’s portfolio forecast error adjustment does not adjust previously booked amounts. Avista instead proposes the adjustment to correct the rate-year impact of a

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<sup>29</sup> *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 08, at 3 ¶ 8 (Mar. 25, 2015).

<sup>30</sup> *See Wash. Utils. & Transp. Comm’n v. Cascade Nat. Gas Corp.*, Docket UG-210755, Order 09, 35 ¶ 108, 37 ¶ 114 (Aug. 23, 2022) (requiring use of a modified historical test year after the adoption of RCW 80.28.425); *in re Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used & Useful after Rate Effective Date*, Docket U-190531, Policy Statement, 8 ¶ 21 (Jan. 31, 2020) (hereinafter “Used & Useful Policy Statement”) (requiring use of a modified historic test year after the amendments to RCW 80.04.250).

<sup>31</sup> *Pac. Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 08, at 3 ¶ 8.

<sup>32</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-160228 & UG-160229, Order 06, at 47 ¶ 80 (Dec. 15, 2016).

<sup>33</sup> WAC 480-07-510(3)(c)(i).

<sup>34</sup> WAC 480-07-510(3)(c)(i).

<sup>35</sup> WAC 480-07-510(3)(c)(ii).

potential “overstatement of [its] electric generation fleet.”<sup>36</sup> It is thus a pro forma adjustment.<sup>37</sup>

20 To pro form the portfolio forecast error adjustment into the revenue requirement, Avista must make three showings.<sup>38</sup> Those three showings require Avista to demonstrate that the adjustment is: (1) known, (2) measurable, and (3) not offset by other factors.<sup>39</sup> The Commission requires these showings to ensure that the adjustment does not disturb the test year relationships between, among other things, revenues and expenses, and that the adjusted revenue requirement is neither under- nor overstated.<sup>40</sup>

21 The 2019 and 2021 amendments to the public service laws do not change the applicability of the known and measurable and offsetting factors standards to adjustments. Those amendments grant the Commission significant discretion in ascertaining a utility’s rate-year expenses in the context of a multiyear rate plan.<sup>41</sup> But, any such “standard, formula, [or] method” used to do so must “arrive at fair, just, reasonable, and sufficient rates.”<sup>42</sup> The Commission has said that the known and measurable and offsetting factors standards remain critical components of setting fair, just, reasonable, and sufficient rates, even in the context of forward-looking ratemaking.<sup>43</sup>

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<sup>36</sup> Kalich, Exh. CGK-1T at 2:13-15.

<sup>37</sup> WAC 480-07-510(3)(c)(ii).

<sup>38</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 19-21 ¶¶ 41-47 (Dec. 22, 2009).

<sup>39</sup> See generally *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705, Order 11, 9-13 ¶¶ 22-31 (Apr. 2, 2010).

<sup>40</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 19-21 ¶¶ 41-47 (Dec. 22, 2009).

<sup>41</sup> RCW 80.28.425(3)(d).

<sup>42</sup> RCW 80.28.425(3)(d).

<sup>43</sup> See *Used & Useful Policy Statement* at 7-9 ¶¶ 20-25.

**B. The Commission Should Decline to Allow Avista to Pro Form the Portfolio Forecast Error Adjustment into its Revenue Requirement as the Adjustment is not Known, Measurable, or Shown not to be Offset by Other Factors**

22 While Avista seeks to make a pro forma adjustment to its revenue requirement, it does not (and cannot) specify the event or events that will cause this overestimate, concretely demonstrate the amount of the overestimate, or show that it has considered whether other rate year events will not cancel out the overestimate. The Commission should, accordingly, reject the adjustment as a matter of law because Avista fails to show that: (1) the adjustment involves a known event, (2) the adjustment involves measurable dollar amounts, or (3) the company has considered offsetting factors.

**1. The portfolio forecast error is unknown.**

23 The Commission considers a proposed adjustment “known” where “the event that causes a change to test year levels . . . occur[s] either within or soon after[] the test year and [is] in place during the period rates will likely be in effect.”<sup>44</sup> The Commission typically accepts as known a pro forma adjustment where the proponent identifies a post-test year event that is readily observable and which has readily ascertainable or predictable effects. For example, the Commission has accepted pro forma adjustments to a utility’s labor expenses where the utility can show its execution of a new contract that includes specified wage increases after the test year.<sup>45</sup> Or, in another example, the Commission will accept pro forma adjustments to a utility’s rate base and depreciation expense where the company can show the post-test-year transfer of plant into service.<sup>46</sup>

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<sup>44</sup> *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-100749, Order 06, 11-12 ¶ 14 (Mar. 25, 2011).

<sup>45</sup> *E.g., Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-170485, UG-170486, UE-171221 & UG-171222, Order 07, 102 ¶¶ 313-14 (Apr. 26, 2018).

<sup>46</sup> *See e.g., Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-150204 & UG-150205, Order 05, 16-18 ¶¶ 35-46 (Jan. 6, 2016).

24           The proposed adjustment here does not involve known events. Neither Mr. Kalich nor Mr. Kinney identify the post-test-year event or events that will give rise to the forecast error. Indeed, Mr. Kinney identifies any number of types of events that *might* result in the error,<sup>47</sup> but the underlying premise of the proposed adjustment is that Avista cannot know which of those events, if any, will actually cause any rate year variance (if it could, it could account for the event in its model or with a more specific adjustment). That inability to identify the causative event means that the Commission cannot project into the rate year any of its readily observable or identifiable effects, and thus cannot in any meaningful way call the adjustment known.

**2.       The portfolio forecast error is not “measurable.”**

25           The Commission requires that any pro forma adjustments involve measurable amounts. In doing so, it has stated that it generally will not accept as measurable adjustments based on “an estimate, a projection, the product of a budget forecast, or some similar exercise of judgment – even informed judgment – concerning future . . . expense.”<sup>48</sup> Instead, it will generally, but not always, accept as measurable an adjustment involving specific costs documented by something like “actual expenditure, invoice, contract, or other specific obligation.”<sup>49</sup>

26           The portfolio forecast error does not involve measurable dollar amounts. Neither Mr. Kalich<sup>50</sup> nor Mr. Kinney<sup>51</sup> provides to the Commission any contracts, receipts, ledger entries, or other proof that specifically identifies the dollar amounts involved with the

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<sup>47</sup> Kinney, Exh. SJK-1T at 68:15-16, 69:2-14.

<sup>48</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE -090134, UG-090135 & UG-060518, Order 10, 21 ¶ 45 (Dec. 22, 2009).

<sup>49</sup> *Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 21 ¶ 45.

<sup>50</sup> See Kalich, Exh. CGK-1T through Exh, CGK-6.

<sup>51</sup> See Kinney, Exh. SJK-1T through Exh. SJK-16.

overestimate of the value of its fleet or the resulting underestimate of its power costs.<sup>52</sup> Nor can they. Again, Mr. Kinney explains that the error arises from future rate-year events that have not yet happened having impacts on the value of Avista’s fleet that no one can yet quantify.<sup>53</sup> At best, Avista attempts to “illustrate the magnitude” of the variance (translation: roughly estimate) by resorting to a backwards looking calculation that produces an average forecast error from prior years that the company projects into the future as the rate-year adjustment dollar amount.<sup>54</sup> By doing so, Avista presents the Commission with the kind of “exercise of judgment – even informed judgment” that the Commission generally refuses to accept as a pro forma adjustment.<sup>55</sup>

27           Avista may argue that the Commission applies the known and measurable standard differently in the context of power costs.<sup>56</sup> True, but that principle does not apply to Avista’s proposed adjustment. The Commission generally applies the known and measurable standard differently to modeled power cost results.<sup>57</sup> The Commission has noted that, in such context, “the modeled results are generally acceptable if the model inputs are reasonable.”<sup>58</sup> But Avista is not using an estimate as an input into a vetted power cost model.<sup>59</sup> It instead finds itself dissatisfied with modeled outputs, and therefore proposes to

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<sup>52</sup> *Cf. Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 21 ¶ 45 (Dec. 22, 2009).

<sup>53</sup> Kinney, Exh. SJK-1T at 68:15-16, 69:2-14.

<sup>54</sup> Kinney, Exh. SJK-1T at 67:1-68:12.

<sup>55</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 21 ¶ 45 (Dec. 22, 2009).

<sup>56</sup> See WAC 480-07-510(3)(c)(ii) (“Pro forma fixed and variable power costs, net of power sales, may be calculated directly based either on test year normalized demand and energy load, or on the future rate year demand and energy load factored back to test year loads.”).

<sup>57</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 22 ¶ 49 (Dec. 22, 2009).

<sup>58</sup> *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-090134, UG-090135 & UG-060518, Order 10, 22 ¶ 49 (Dec. 22, 2009).

<sup>59</sup> Kalich, Exh. CGK-1T at 24:1-6.

make an adjustment to the modeled results outside of the model.<sup>60</sup> The Commission should not view the adjustment, which involves nothing but unknowns (unknown events, unknown dollar amounts, and, as discussed more below, unknown potential for a revenue requirement impact offset) as the type of rigorously analyzed change it will accept.<sup>61</sup>

28           Avista might also argue that the Commission’s discretion to ascertain its expenses in the context of a multiyear rate plan also frees it from application of the known and measurable standards. That argument should fare no better than any argument about the inapplicability of the known and measurable standard to power costs. As noted above, the Commission must exercise its discretion in a way that produces fair, just, reasonable, and sufficient results.<sup>62</sup> The Commission has stated that even when dealing with future events, such as the future addition of plant in service, it continues to apply the known and measurable standards as important components of producing such rates.<sup>63</sup>

**3.       Avista fails to show that other factors will not offset the dollar amounts involved in any portfolio forecast error.**

29           The Commission requires any proponent of a pro forma adjustment to consider whether contemporaneous changes in revenues or expenses might offset its financial impact.<sup>64</sup> This includes offsetting factors that directly relate to the adjustment at issue, as well as those that do not.<sup>65</sup>

30           Avista has failed to carry its duty of considering direct offsetting factors. As discussed above, neither Mr. Kalich nor Mr. Kinney identifies the specific rate-year cause of

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<sup>60</sup> Kalich, Exh. CGK-1T at 24:1-6.

<sup>61</sup> *Avista Corp.*, Dockets UE -090134, UG-090135 & UG-060518, Order 10, at 21 ¶ 45.

<sup>62</sup> RCW 80.28.425(3)(d).

<sup>63</sup> E.g., *See Used & Useful Policy Statement* at 7-9 ¶¶ 20-25.

<sup>64</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705, Order 11, at 12 ¶ 27.

<sup>65</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705, Order 11, at 12-13 ¶ 28-29.

any power cost variance. Failing to do so not only makes it difficult to characterize the adjustment as known, it also prevents Avista and other parties from attempting to analyze any direct offsetting factors that might reduce or eliminate the adjustment's revenue requirement impacts. Tellingly, neither Mr. Kalich nor Mr. Kinney offers any testimony about such consideration.

31           Avista has similarly failed to provide evidence that it considered any indirect offsetting factors. Again, neither Mr. Kalich nor Mr. Kinney describes any such efforts in their testimony.

32           To the extent that Mr. Kinney's testimony does have relevance to the issue of indirect offsetting factors, it is unhelpful to the company, for two reasons. First, that testimony discusses in some depth the ways that yearly variations in the conditions surrounding Avista's NPE can interact with each other to cancel out to some extent.<sup>66</sup> But, again, the premise of Avista's adjustment is that it cannot know how these factors will play out or affect each other in the rate year (again, if it could, it could model them or make a more direct adjustment to its test year results). That testimony makes the consideration of offsetting factors all the more important. But, again Avista provides no testimony of such consideration.

33           Second, Mr. Kinney's testimony about Avista's portfolio forecast error, coupled with the company's recent history with recovery of its power costs, shows that any error is more likely than not canceled out by other factors. Mr. Kinney identifies portfolio forecast error in

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<sup>66</sup> Kinney, Exh. SJK-1T at 68:13-69:14.

the years 2018 through 2022. In three of those years, specifically 2018,<sup>67</sup> 2019,<sup>68</sup> and 2020,<sup>69</sup> the company's actual NPE was less than forecasted. Put otherwise, in three of the five years that Avista found evidence of portfolio forecast error, it nevertheless over recovered, rather than under recovered, its power costs because something in the rate year canceled out the effect of the error. Again, that reality would seem to make testimony about consideration of offsetting factors critical to determining whether the adjustment results in rates that are fair, just, reasonable, and sufficient. But, again, Avista offers the Commission none.

**C. The Commission Should Reject the Portfolio Forecast Error Adjustment Because it Unfairly, Unjustly, or Unreasonably Modifies the ERM**

34 Avista also seeks to include the portfolio forecast error into the ERM baseline. The Commission should deny it the ability to do so as a matter of law because the adjustment undermines both the proper functioning of the ERM and the public interest accommodation at its heart. Specifically, the proposed adjustment alters the allocation of risk within the ERM in a manner that unfairly, unjustly or unreasonably favors Avista and undermines the incentive to control power costs that the Commission has long required the ERM to contain.

35 As noted, the ERM is a deferral and true up mechanism.<sup>70</sup> Avista defers any annual post-deadband difference between its forecasted (baseline) and actual expenses and revenues

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<sup>67</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-190334, UG-190335 & UE-190222, Order 09, 45 ¶ 131 (Mar. 25, 2020) (approving Avista's 2018 ERM deferral entries); *See generally Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-190334, UG-190335 & UE-190222, Ehrbar, Exh. PDE-1T at (Mar. 29, 2019) (discussing the ERM deferral entries showing Washington-allocated net power costs for 2018 were \$15,544,268 less than authorized despite alleged forecast error of \$700,000, *see* Kinney, Exh. SJK-1T at 68, Table 11).

<sup>68</sup> *In re Petition of Avista Corp.*, Docket UE-200291, Order 01, 2 ¶ 6 (June 25, 2020) (Washington-allocated net power costs for 2019 were \$5,462,092 less than authorized despite alleged forecast error of \$32 million, *see* Kinney, Exh. SJK-1T at 68, Table 11).

<sup>69</sup> *In re Petition of Avista Corp.*, Docket UE-210216, Order 01, 2 ¶ 7 (Sept. 30, 2021) (Washington-allocated net power costs for 2020 were \$17,479,519 less than authorized despite alleged forecast error of \$38.8 million, *see* Kinney, Exh. SJK-1T at 68, Table 11).

<sup>70</sup> *Avista Corp.*, Docket UE-061411, Order 04, at 2 ¶ 5.

for the four accounts that comprise the company's major power cost accounts.<sup>71</sup>

Specifically, these are the expenses in Account 555 (Purchased Power), Account 501 (Thermal Fuel), and Account 547 (Fuel), and the revenues in Account 447 (Sale for Resale).<sup>72</sup>

36           The ERM does not provide Avista with dollar-for-dollar recovery of its energy costs. Instead, as currently structured, it contains dead<sup>73</sup> and sharing bands<sup>74</sup> that prevent such recovery. Those features are intended to: (1) allocate the risk of ordinary power cost variability equitably between the company and its customers, and (2) provide an incentive for Avista to prudently manage its power costs.<sup>75</sup>

37           Mr. Kalich incorporates the portfolio forecast error into the ERM as a reduction in the revenues in Account 447.<sup>76</sup> That reduces those revenues by \$65.8 million, thus raising the ERM baseline by that same amount.<sup>77</sup> That baseline change is problematic for three reasons, each of which should independently prompt the Commission to summarily determine that it should reject the adjustment.

38           First, the adjustment undermines the proper functioning of the ERM. As the Commission has recognized, "setting a proper baseline is necessary for the ERM to function as intended."<sup>78</sup> All other things being equal, pushing the baseline up makes it more likely

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<sup>71</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket UE-011595, Fifth Supp. Order, 14-15 ¶ 35 (June 18, 2002) (internal quotation omitted).

<sup>72</sup> Kalich, Exh. CGK-1T at 31:13-15.

<sup>73</sup> Kinney, Exh. SJK-1T at 51:2-5 (describing the ERM's deadbands).

<sup>74</sup> Kinney, Exh. SJK-1T at 51:5-12 (describing the ERM's sharing bands).

<sup>75</sup> *In re Petition of Avista Corp.*, Docket UE-060181, Order 03, 9 ¶ 23 (June 16, 2006).

<sup>76</sup> Kalich, Exh. CGK-3 at 2.

<sup>77</sup> See Kalich, Exh. CGK-1T at 31:13-15 (explaining that the ERM baseline is set by adding the expenses in Accounts 555, 501, and 547, then subtracting the revenues in Account 447).

<sup>78</sup> *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-170485, UG-170486, UE-171221 & UG-171222, Order 07, 54 ¶ 160 (Apr. 26, 2018).

that Avista's customers overpay on their power costs.<sup>79</sup> Avista gives the baseline exactly that kind of a shove, raising it by \$65.8 million based on rate year events that Mr. Kalich and Mr. Kinney do not, and cannot, identify, and whose specific impacts they therefore cannot specifically quantify. The reasoning employed by the Commission in previous cases indicates that adjustments to the ERM baseline for such speculative events is arbitrary and improper.<sup>80</sup> It should simply follow its own analysis and reject the adjustment at issue here.

39           Second, and relatedly, adjusting the baseline based on unknown and unquantifiable events represents a shifting of risk within the ERM. As noted, the ERM is structured to equitably allocate risk between the company and its customers.<sup>81</sup> Again, here Avista seeks to raise the ERM baseline by \$65.8 million, which will eliminate the risk that it would under collect that same amount of money from customers as a result of power cost variability. But that shift is perverse given that the ERM *itself* is intended to allocate the risk of power cost variability.<sup>82</sup> Avista, in other words, seeks to doubly insulate itself from power cost variability. That double insulation is inimicable to the equitable allocation of risk that the Commission intended the ERM to create.

40           Third, the adjustment deadens the incentive to control power costs that the ERM is currently structured to provide to Avista. As just discussed, the adjustment shifts \$65.8 million in risk from Avista to its customers. That shift in risk represents a massive deadening of the incentive to control costs the ERM is currently structured to provide.<sup>83</sup>

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<sup>79</sup> See *Avista Corp.*, Dockets UE-170485, UG-170486, UE-171221 & UG-171222, Order 07, at 54 ¶ 160.

<sup>80</sup> *Avista Corp.*, Dockets UE-170485, UG-170486, UE-170221 & UG-170222, Order 07, 54 ¶ 158 (“The expiration of the PGE contract is a finite, known event with a measurable impact, and adjusting the ERM baseline based on how that event would impact power costs during a normalized year is appropriate.”).

<sup>81</sup> *Avista Corp.*, Docket UE-060181, Order 03, at 9 ¶ 23.

<sup>82</sup> *In re Avista Corp.*, Docket UE-180261, Order 01, 1 ¶ 1 (June 28, 2018) (the ERM is intended “to account for ordinary fluctuations in power costs outside of an authorized dead-band for power-cost recovery in base rates.”).

<sup>83</sup> *Avista Corp.*, Docket UE-060181, Order 03, at 9 ¶ 23.

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Avista may argue that the testimony from Mssrs. Kalich and Kinney concerning modifications to the ERM create material issues of fact as to the second and third reasons to reject the adjustment to the ERM baseline. But the Commission has previously found testimony similar to the company's, which covers Avista's contentions that its power costs and forecasting are influenced by factors beyond its control,<sup>84</sup> insufficient to eliminate dead and sharing bands from power cost mechanisms,<sup>85</sup> and, indeed, the Commission did so again just this week,<sup>86</sup> where it employed analysis that directly applies to Avista's arguments here.<sup>87</sup> Thus, neither Mr. Kalich's nor Mr. Kinney's testimony creates a material issue of fact that would prevent summary determination as to the impropriety of adjusting the ERM baseline.

## VII. CONCLUSION

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Staff requests that the Commission summarily determine that Avista may not incorporate the portfolio forecast error into its revenue requirement or ERM baseline.

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<sup>84</sup> See generally, Kalich, Exh. CGK-1T at 24:7-31:7; Kinney, Exh. SJK-1T at 50:1-66:8.

<sup>85</sup> E.g., *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-130043, Order 05, 66-68 ¶¶ 169-173 (Dec. 4, 2013).

<sup>86</sup> *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Dockets UE-230172 & UE-210852, Order 06, 103-29 ¶¶ 330-404 (Mar. 19, 2024).

<sup>87</sup> E.g., *PacifiCorp*, Dockets UE-230172 & UE-210852, Order 06, at 123 ¶ 389 ("Without the guarrails of deadbands and sharing bands, the utility no longer has an economic stake in a major resource decision. As a result, the utility is more likely to ignore fossil fuel price volatility because it knows, regardless of price fluctuations, that it will be made whole by ratepayers. This approach creates a circumstance that one witness termed a 'moral hazard' where one party is willing to engage in risky behavior or not act in good faith because it knows the other party, in this case the ratepayer, will bear the economic consequences."), 125 ¶ 394 ("Turning now to the issue of NPC variability due to increased renewable energy as a basis for removing the deadbands and sharing bands, we disagree that removing these customer protections is the solution. In fact, we believe that it variability is as pronounced as PacifiCorp argues then the need for such protections is even greater for customers.").

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Respectfully submitted,

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