

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION,

Respondent.

DOCKETS UE-240006 &
UG-240007 (Consolidated)

PUBLIC COUNSEL’S REPLY IN
SUPPORT OF UTC STAFF’S
MOTION FOR PARTIAL
SUMMARY DETERMINATION

I. INTRODUCTION

I. This is not a close decision; clear Washington Utilities and Transportation Commission (Commission) precedent dictates granting UTC Staff’s (Staff) Motion for Partial Summary Determination as a matter of law. Adjustments to revenue, expense, or rate base “typically cannot be an estimate, a projection, the product of a budget forecast, or some other similar exercise of judgments—even informed judgment.”¹ Exceptions to this rule are “few and demand a high degree of analytical rigor.”² Despite this clear legal requirement, Avista, relying on Mr. Kalich’s informed judgment and Mr. Kinney’s five-year average calculation, asks the Commission to adjust its pro forma net power costs and Energy Recovery Mechanism (ERM) baseline by \$65.8 million. As a matter of law, Avista’s proposed “portfolio forecast error”

¹ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG 090705 (Consolidated), Final Order 11 ¶ 26 (Apr. 8, 2010).

² *Id.*, ¶ 26.

REPLY TO STAFF
MOTION FOR SUMMARY
DETERMINATION ON BEHALF
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adjustment is precisely the kind of estimate, projection, or exercise of judgment that lacks the necessary high degree of analytical rigor and must be rejected. Moreover, adopting this unsupported adjustment would undermine the purpose of the ERM and unfairly allocate risk to consumers. The fact that Avista finds it difficult to forecast neither absolves it of its responsibility to try, nor justifies abandoning a mechanism for allocating risk so that Avista cannot exploit its captive ratepayers, or, as in this case, follow its incentive to end up on the “winning” side of net power forecasting. The Commission should grant Staff’s Motion for Partial Summary Determination.

II. RELIEF REQUESTED

2. The Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) requests that the Commission reject Avista’s proposed portfolio forecast error adjustment to its net power costs and to its ERM baseline as a matter of law.

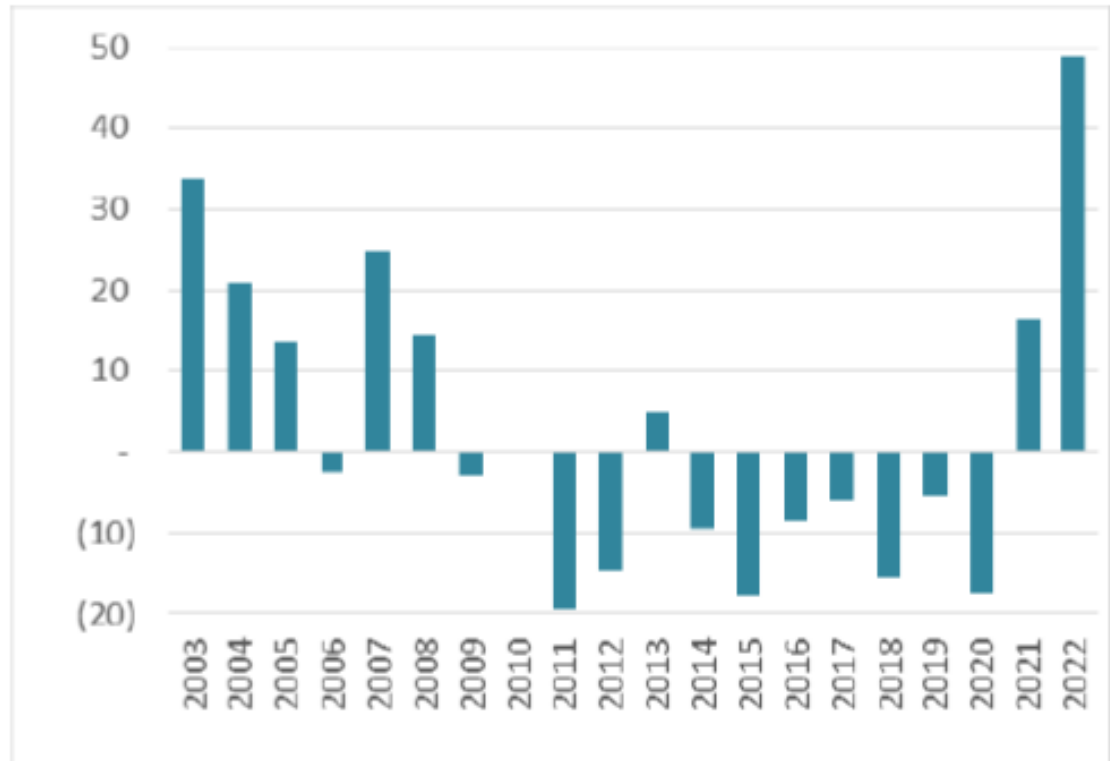
III. STATEMENT OF FACTS

3. Public Counsel will not repeat the facts summarized in Staff’s Motion for Partial Summary Determination, and incorporates those by reference.³ It is, however, worth emphasizing the factual context for Avista’s current request for a portfolio forecast adjustment. The issue of forecast uncertainty is not new. In fact, Avista’s ERM came into existence shortly after what the Commission described as “highly perturbed conditions in Western wholesale

³ Staff’s Motion for Summary Determination, ¶¶ 5–10 (filed Mar. 20, 2024) [hereinafter, *Staff’s Motion*].

power markets during 2000 and 2001.⁴ Since that 2000–2001 energy crisis, Avista’s net power costs passed through the ERM have varied over time generally with net surcharges from 2003 to 2008, net refunds from 2011 to 2020, and net surcharges in 2021 and 2022 as illustrated by the following chart:⁵

Illustration No. 5: Washington ERM Deltas, 2003-2022 (\$ millions)



4. Over the years, Avista’s position on whether the forecast modeling needed to be adjusted has changed. For example, in 2018, in the midst of multiple years of over-estimating net power

⁴ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Docket UE-011595, Final Order: Fifth Supp. ¶ 28, (June 18, 2002).

⁵ Direct Test. of Scott J. Kinney, Exh. SJK-1T at 52 (Illustration 5).

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costs, Avista faced arguments from Staff and Public Counsel that its power cost model was biased toward overestimating costs.⁶ Avista took the position that just “because Avista didn’t perfectly forecast costs during a period of rapidly falling expense” that did not mean there was “something inherently or intentionally biased in its power cost modeling.”⁷ Indeed, Avista argued that the ERM had to be evaluated in terms of its overall history back to 2003, and its forecast costs “should not be changed based on how current conditions benefit one party or another, particularly in the absences of alternative model recommendations.”⁸ The Commission ultimately agreed and concluded that “power costs are set based on known and forecast costs during a normalized year, and decisions should not be made solely based on how the forecast performed during the specific circumstances of a single test year.”⁹

5. Five years later, however, Avista has changed its tune. Despite admitting that the power expenses “in 2022 and 2023 are different,” Avista abandoned its prior position that analysis should extend over the entire period of the ERM, and took a five year average of missed forecasts, which includes what it alleges are abnormal 2022 and 2023 costs.¹⁰ Within that five-year period, the forecast error quadrupled in 2022 and 2023.¹¹ Neither Mr. Kinney nor Mr. Kalich explain why a five-year average is appropriate as opposed to a longer time frame or why an average should be used if, in fact, 2022 and 2023 are abnormal. Mr. Kinney does warn that

⁶ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-170485, et al., Final Order 07/02/02, ¶ 125 (Apr. 26, 2018).

⁷ *Id.*, ¶ 139.

⁸ *Id.*, ¶¶ 141, 147.

⁹ *Id.*, ¶ 158.

¹⁰ Kinney, Exh. SJK-1T, at 67:6–69:14.

¹¹ *Id.*, at 68 (Table 11).

“intervenors have incentives to argue for assumptions biased toward customers ending up on the ‘winning’ side of the deadbands.”¹² So too, do utilities have such incentives, which is a compelling reason for the Commission’s requirement that forecasting be supported by analytical rigor.

IV. STATEMENT OF ISSUES

6. Should the Commission exclude, as a matter of law, a portfolio forecast error adjustment where that adjustment is an estimate not backed by analytical rigor?

V. ARGUMENT

7. Public Counsel urges the Commission to grant Staff’s Motion for Partial Summary Determination. Avista’s portfolio error adjustment lacks sufficient analytical rigor to be included as a pro forma adjustment as it is neither known nor measurable. In addition, as noted by Staff, Avista make no effort to calculate offsetting factors. The Commission’s long held precedent requires rejection of Avista’s adjustment. Moreover, Avista’s request to include the error adjustment in the ERM baseline would unfairly allocate the risk of power cost fluctuations to customers. In Avista’s parlance, it would make Avista the perpetual “winning” side by allowing it to systematically over collect power costs at the expense of customers. Such ratemaking violates the statutory requirement that ratemaking be “just, fair, reasonable, and sufficient.”¹³

The Commission should grant Staff’s Motion.

¹² *Id.*, at 53:23–54:1.

¹³ RCW 80.28.010(1).

A. The Commission Should Not Permit Adjustments to Revenue Requirements that are not Known, Measurable, or Shown to Not be Offset by Other Factors.

8. A company may not adjust revenues in a rate case unless there is a “mechanism ensuring, and evidence establishing, that [an adjustment] does not disturb test year relationships.”¹⁴ This requires that the utility show that the adjustment must be known and measurable.¹⁵ An event is “known” if it occurred during or shortly after the historical test year and it is “measurable” if it is not an estimate, projection, or product of a budget forecast.¹⁶ Additionally, an adjustment must be matched with offsetting factors that would diminish the impact of the known measurable event.¹⁷ Generally, the less certain that the actual utility costs and offsetting factors are known, the greater the risk that an adjustment impermissible disturbs the test year relationships and the greater the burden on the Company.¹⁸

9. For all of the reasons enumerated in Staff’s motion, Avista fails to show that its portfolio error adjustment is known or measurable. Avista’s future errors have not yet occurred and are not currently known. Avista can predict neither the magnitude of nor relevant factors for its future errors. The evidence it does submit demonstrates that it is far more complex than taking an average of aggregated misses. In 2022, for example, dramatically higher natural gas prices drove costs higher, but in 2023, those natural gas prices were below forecast.¹⁹ Avista provides no

¹⁴ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-090134 & UG 090135 (*Consolidated*), Final Order 10 ¶ 43 (Dec. 22, 2009).

¹⁵ *Id.*, ¶ 45.

¹⁶ *Id.*, ¶ 45.

¹⁷ *Id.*, ¶ 46.

¹⁸ *Id.*, ¶ 47.

¹⁹ Kinney, Exh. SJK-1T, at 69:2–69:14.

evidence or analysis about how natural gas prices will behave in 2025 or 2026 other than its net power modeling, but nonetheless asks for an adjustment. Moreover, because Avista cannot predict what factors will ultimately drive costs, there is also no way to adjust for offsetting factors. What, for example, will the Avista’s continued incorporation into the Energy Imbalance Market have on power cost volatility? Avista’s heavy-handed portfolio error adjustments contain too many unknowns and is precisely the kind of estimate that the Commission disallows to be incorporated into rates.²⁰

10. The methodology that Avista proposes for making the adjustment is also too speculative under Commission precedent. As Avista itself argued in 2018, the power costs based on known and forecast costs “should not be changed based on how current conditions benefit one party or another.”²¹ Moreover, Avista provides little or no explanation for why the appropriate average should be the last five years. Given the significant errors in 2022 and 2023, that average is significantly skewed by a very small sample size. And as Staff properly notes, during three of these years of this study, Avista over recovered,²² making the need such a significant adjustment toward collecting more costs a dubious conclusion to draw. While Avista may have successfully indicted the reliability of forward market prices, particularly in 2022 and 2023, it utterly fails to meet its burden that the appropriate response would be to increase rates against the possibility of

²⁰ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-090134 & UG 090135 (*Consolidated*), Final Order 10, ¶ 45 (Dec. 22, 2009).

²¹ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-170485, et al., Final Order 07/02/02, ¶¶ 141, 147.

²² *Staff's Motion*, ¶ 33.

undercollection or to provide an analytical improvements to its modelling. Avista’s request for an adjustment for portfolio error is legally insufficient and should be denied.

11. The Avista general rate case order entered in 2018 provides a helpful contrast between the kinds of adjustments that are permitted and the current request. In that case, the Commission permitted adjustments to the ERM baseline for increased transmission costs and lost revenue from an expiring Portland General Electric (PGE) contract.²³ These are the kinds of factors—increased transmission costs or expiring contracts—that can be “known and measurable” and justify an adjustment.

12. Nor is the situation as dire as Avista suggests. Even if its net power forecast is again low, it will recover costs through its ERM mechanism. The process of net power forecasting is already an exception to traditional rate making, and one in favor of the company. If Avista can improve its forecasts to be more accurate, it should be permitted to do so. It should not be permitted to abandon the project of forecasting and be awarded rates always set to overcollect at the expense of ratepayers. As discussed below, this would pervert the reason and purpose of ERM.

B. The Commission Should Not Permit a Forecasting Error Adjustments to the ERM Baseline.

13. Categorically, the Commission should reject incorporation of forecasting error into the ERM baseline. From its inception in 2002, the ERM was and is an instrument to allocate “risk between shareholders and ratepayers.”²⁴ In additional to the primary purpose of “allocate[ing]

²³ *Id.*, ¶ 158.

²⁴ *Wash. Utils. & Transp. Comm'n v. Avista Corp.* Docket UE-011595, Final Order: Fifth Supp. ¶ 7, (June 18, 2022).

appropriately between shareholders and ratepayers the risk of power cost variability the ERM is meant to address” the ERM has the added benefit of “motivate[ing] Avista to effective[ly] manage or even reduce its power costs.”²⁵ This makes logical sense as ratepayers have no ability to mitigate power cost variability, but Avista does, even if its power is not absolute. In order to achieve the goal of allocating risk, “setting a proper baseline is necessary for the ERM to function as intended.”²⁶ Constantly moving the baseline up and down in general rate cases, results in distorted results and the Commission will allow baseline adjustment “only in extraordinary circumstances.”²⁷

14. Applied to Avista’s request for a portfolio forecast error to the ERM baseline, these legal principles require a categorical rejection. Whether, as Avista argues, the market conditions have risen to the level of “extraordinary” such that a modification of the ERM is necessary can be litigated in this general rate case.²⁸ Whatever the resolution of that issue, a proposal to distort the ERM toward the overcollection of power costs in advance is impermissible. The primary purpose of the ERM is to allocate the risk of errors in power forecasts.²⁹ Two years of under-collecting is not such an extraordinary circumstance that Avista needs to adjust the baseline so radically in its favor. If it were, the Commission should have allowed a forecast error adjustment in the other direction between 2008 and 2020. To borrow Mr. Kinney’s 2018 language, Avista’s incentive to

²⁵ *Wash. Utils. & Transp. Comm'n v. Avista Corp.* Docket UE-060181, Order 3, ¶ 23 (June 16, 2006).

²⁶ *Wash. Utils. & Transp. Comm'n v. Avista Corp.* Dockets UE-170485, et al., Order 7/02/02, ¶ 160 (Apr. 26, 2018).

²⁷ *Id.*, ¶ 160.

²⁸ At this time, Public Counsel notes here only that it disagrees that Avista’s financial condition is so severe as to warrant extraordinary relief.

²⁹ *Wash. Utils. & Transp. Comm'n v. Avista Corp.* UE-011595, Final Order: Fifth Supp. ¶ 7, (June 18, 2022).

argue for assumptions biased toward customers ending up on the “winning” side of the ERM is not basis for departing from established Commission precedent.³⁰

15. Public Counsel notes that rejecting a biased forecast model does not foreclose Avista from seeking alterations to the ERM itself. But the Commission should reject Avista’s attempt to rewrite the purpose of the ERM from risk allocation to primarily a financial incentive for cost control.³¹ The ability to control for market conditions must be assessed comparatively between the utility and ratepayers. While Avista asserts that its inability to control market conditions makes it difficult to avoid costs, ratepayers have no ability to hedge, negotiate long-term contracts, or plan new generation projects. Because disconnecting from the only source of power is not a reasonable option, it is fair to say that ratepayers have no control at all. The reason for the ERM is to equitably allocate risk between captive ratepayers and the only party with agency—the utility. Adopting a forecast biased in favor of the utility cannot be reconciled with the purpose of the ERM or with the statutory requirement for fair rates and must be rejected as a matter of law.

VI. CONCLUSION

16. Public Counsel asks the Commission to determine, as a matter of law, that Avista’s request to add \$65.9 Million to its net power forecast and to adjust the ERM baseline must be rejected. Avista’s proposal lacks the analytical rigor to support deviation from Commission

³⁰ Kinney, Exh. SJK-1T, at 53:23–54:1.

³¹ *Id.*, at 66:6–7 (“one main purpose of the deadbands it to provide a financial incentive for cost control.”).

precedent and approving a bias in net power forecasting is categorically a violation of the obligation to approve “just, fair, reasonable, and sufficient” rates.³²

DATED this 9th day of April, 2024.

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³² RCW 80.28.010(1).

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