

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION,

Respondent.

Docket Nos. UE-240006 & UG-240007  
(Consolidated)

ANSWER OF AVISTA CORPORATION  
TO STAFF'S MOTION FOR PARTIAL  
SUMMARY DETERMINATION

1 COMES NOW, Avista Corporation (hereinafter “Avista” or the “Company”), and respectfully answers Staff’s Motion for Partial Summary Determination (hereinafter “Motion”), filed on March 20, 2024.

**I. INTRODUCTION**

2 Staff’s Motion is both remarkable and troubling in two regards: (1) it would deny the Commission the opportunity to develop a complete record, through the hearing process, on the issues presented, before ultimately determining whether, at the end of the day, the resulting rates are just, reasonable and sufficient; and (2) it represents a “step backward” in the Commission’s ongoing effort to assure that rates accurately reflect costs and revenues during the rate-effective period.

3 In the end, any reviewing court will examine whether there were sufficient findings of fact to support the final decision of the Commission. Those findings can only be developed through a robust hearing and the development of the record. Staff’s Motion should be denied.

## **II. STAFF'S STATEMENT OF THE ISSUES**

4           Staff urges the Commission to “summarily determine” two issues: (1) that Avista may not, as a matter of law, make a pro forma adjustment to its power cost adjustment to reflect what Avista believes will better reflect the probable power costs in the rate-effective period (it contends that such costs are “not known and measurable”); and (2) that this would serve to somehow “malform” the ERM, result in an “inequitable allocation of risk” between the Company and its ratepayers and “deaden” the “incentives to control power costs” reflected in the ERM.<sup>1</sup> In more colorful terms, Staff characterizes the “portfolio forecast error adjustment” as a mere “kludge” to account for the possibility that power supply costs will be higher than historical, test period levels.<sup>2</sup> Staff then jumps to the conclusion that “no material issue of fact exists” with regard to the Company’s proposed adjustment.<sup>3</sup>

5           Multiple questions of fact (discussed below) demand fair examination through the hearing process, where testimony on all sides is presented, and tested through responsive testimony, cross-examination and briefing. Staff’s Motion would preclude all of that on the issues presented, leaving Avista to wonder, “where’s my day in court?” The outcome of this rigorous hearing process may or may not vindicate Staff’s Motion on whether the inclusion would produce “just and reasonable rates” (they say no, it would not), but that process needs to first happen, or the Commission’s ultimate decision is vulnerable on appeal.<sup>4</sup>

6           Denial of Staff’s Motion, on the other hand, serves the interests of justice and assures that

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<sup>1</sup> Motion at ¶¶ 2-3.

<sup>2</sup> Id.

<sup>3</sup> Motion at ¶4.

<sup>4</sup> A reviewing court will generally defer to the expert conclusions of an administrative body, if supported by findings of fact, but no special expertise is required of the court to assess whether adequate findings of fact, in the first instance, were made in support of the decision, through a robust hearing process.

the issues raised are fully vetted through the hearing process. If, at the end of the day, after Staff testimony, cross-examination and briefing, Staff's position is ultimately supported by actual findings of fact, and if Staff's views on the reach and scope of power supply pro forma adjustments are accepted by the Commission, then so be it. What is the downside of carrying these issues forward to hearing? Only the time and effort required on all sides to develop a sufficient record upon which the Commission can later rely in reaching its decision. As such, the purpose of this Answer is not to debate the merits of the adjustment -- only to assure that the debate eventually happens at hearing. To be clear, the Commission need not (and should not) resolve the factual questions presented at this time. It must, however, acknowledge that factual questions exist and are meant for hearing.

7 The presiding officer must regulate the course of the proceedings in conformity with applicable statutes and rules. A fundamental tenet of the Administrative Procedures Act (APA) is, of course, the right to be heard. This is expressed in RCW 34.05.449(2) (Procedures at Hearing):

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

RCW 34.05.461(3) (APA) also provides:

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(Emphasis added) These requirements of the APA are embedded in the Commission's own

organic statutes:

**80.28.020 Commission to fix just, reasonable, and compensatory rates.**

Whenever the commission shall find, after a hearing, had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company electrical company, . . . for gas, electricity, . . . are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order. (Emphasis added)

8 Finally, reviewing courts emphasize the importance of findings predicated on sufficient evidence: Factual findings of administrative agency are reviewed under substantial evidence standard, under which there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true. Wilson v. Employment Sec. Dept. of State, 87 Wn. App. 197, 940 P.2d 269 (1997).<sup>5</sup>

9 The distinctions between findings of fact and conclusions of law are well understood and attended to in the drafting of written orders after evidentiary hearings. After a discussion of the evidence in the body of the order, the Commission’s decision on disputed findings of fact is typically detailed with multiple “Findings of Fact” at the conclusion of the Order. This, in turn, is followed by “Conclusions of Law,” which apply legal reasoning to the Findings, such as whether proposed rates are “fair, just, reasonable, and sufficient as a matter of law.”<sup>6</sup>

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<sup>5</sup> A court reviews the Commission’s findings of fact under the substantial evidence standard. US West Communications, Inc. v. Washington Utilities and Transp. Comm’n, 134 Wn.2d 74, 949 P.2d 1337 (1997). Order of department, as to rates, must be based on matters of record at hearing. State ex rel. Country Club of Seattle v. Department of Public Service, 198 Wash. 37, 86 P.2d 1104, 1939 Wash. LEXIS 482 (Wash. 1939); State ex rel. Puget Sound Navigation Co. v. Department of Transp., 33 Wn.2d 448, 206 P.2d 456, 1949 Wash. (Wash. 1949).

<sup>6</sup> RCW 80.28.020. If a determination concerns whether the evidence showed that something occurred or existed, it is properly labeled a *finding of fact*.” Goodeill v. Madison Real Estate, 191 Wn. App. 88, 99, 362 P.3d 302 (2015) (quoting Moulden & Sons, Inc. v. Osaka Landscaping & Nursery, Inc., 21 Wn. App. 194, 197, n.5, 584 P.2d 968 (1978), review denied, 185 Wn.2d 1023 (2016)). However, “if a determination is made by a process of legal

10           The Commission’s own rules (WAC 480-07-380(2)) provide that, in addressing a motion such as presented here for summary determination, it will apply the standards applicable to a motion for summary judgment under Washington Superior Court Civil Rule 56 (CR 56). To meet the **standard** of **summary judgment**, a party must demonstrate two factors: (1) that there are no genuine disputes of material fact, leaving the trier of fact nothing to decide; and (2) that the moving party is entitled to a judgment as a matter of law. CR 56. In a **summary judgment** proceeding, a “material” fact is a fact the outcome of the proceeding depends upon, in whole or in part. Johnson v. Recreational Equip., Inc., 159 Wn. App. 939, 954, 247 P.3d 18, 26 (2011), quoting Lamon v. McDonnell DouRias Corp., 91 Wn.2d at 349, 588 P.2d 1346 (1979). Furthermore, the Court must view all facts in a light most favorable to the non-moving party. Reynolds v. Hicks, 134 Wn.2d 491, 495, 951 P.2d 761 (1998).

**III. THE FACTUAL PREDICATE MAY ONLY TO BE DETERMINED AFTER DEVELOPMENT OF A COMPLETE RECORD**

11           The very recitation of facts by Staff<sup>7</sup> serves to underscore the fact-dependent nature of the question before the Commission. While selective in its choice of references to Avista’s testimony, Staff seems to acknowledge that “there are many driving forces of forecast error each year, but markets tend to be the greatest driver of forecast error” according to Company Witness Kinney.<sup>8</sup> Accordingly, these multiple driving forces interact in complex ways and often “work at cross-purposes” with regard to Avista’s power costs.<sup>9</sup> Staff refers to Company testimony,<sup>10</sup> attesting to

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reasoning from, or interpretation of the legal significance of the evidentiary facts, it is a **conclusion of law.**” Goodeill, 191 Wn. App. at 99 (quoting Moulden & Sons, Inc., 21 Wn. App. at 197, n.5). (Emphasis added)

<sup>7</sup> See Motion at ¶¶3-5.

<sup>8</sup> Motion at ¶6, referring to Kinney, Exh. SJK-1T at 68, ¶¶15-16.

<sup>9</sup> Ibid.

<sup>10</sup> More accurately, pre-filed testimony that has yet to be admitted into evidence or responded to by other parties or actually tested on cross-examination – all of which the Company welcomes.

the significant instability in the market and differences between 2022 and 2023: the “doubling” of Avista’s natural gas fuel expense, resulted in a significant increase in error relative to the forecast (almost four times the error seen in 2021). In 2023, the deterioration worsened: Avista’s lowest hydro year since the energy crisis of 2000, magnified the difference between the forecast and actual results, resulting in the largest ever delta between portfolio forecasts and actual costs.<sup>11</sup>

12           Given these significant disruptions in the power supply market and to better capture what the evidence suggests is necessary to accurately reflect power costs during the rate-effective period, Avista compared a “Forward (Forecast) Value,” valuing various components of the Company’s portfolio for each year based on five years’ worth of historical forward market prices.<sup>12</sup> It then developed an “Actual Value” which valued those same portfolio components for those same years using actual index prices and positions.<sup>13</sup> The difference between the forecast and actual values for any given year yielded what it termed its “forecast error.”<sup>14</sup> It then averaged the annual forecast error for the five years from 2018 – 2022, to yield a “portfolio forecast” error of \$65.8 million (system).<sup>15</sup> This is not an insignificant issue in the determination of the Company’s overall revenue requirement. If Staff’s Motion is accepted, it would reduce the proposed revenue requirement from \$77.067 million to \$34.884 million, a difference of \$43.183 million. The sheer significance of what is at stake is reason enough to proceed cautiously and develop a full record.

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<sup>11</sup> Motion at ¶6, referring to Kinney, Exh. SJK-1T at 69:2-14.

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

<sup>13</sup> Id. at 67:8-17.

<sup>14</sup> Although characterized as a “forecast error,” that may carry the wrong connotation. That “error” is really just the difference (or delta) between the forecast value and actual value.

<sup>15</sup> Id. at 68:7-12. Company Witness Kalich incorporates the “portfolio forecast error” into the ERM “baseline.” (Kalich Exh. CGK-1T at 34:1-6). (See also Exh. CGK-3 for the calculation of pro forma power supply adjustment.) Finally, Company Witness Schultz incorporates the pro forma power supply adjustment into the determination of the Company’s revenue requirement deficiency. Eliminating this adjustment would, in and of itself, reduce Avista’s overall proposal revenue requirement from \$77.067 million to \$34.884 million. Staff would have the Commission accomplish all of that without any hearing on the issue.

13 That aside, what are some of the factual issues lurking in the background, even beyond what Staff, itself, referred to? They are many, and just a few are enough to make the point:

(1) What is the present state of the energy markets and their future prospects as it impacts Avista?

(2) Will reliance on forward market prices reasonably reflect future costs during the rate period?

(3) What are the factors driving this variability and can they be reasonably estimated and captured through the pro forma adjustment using previous methodologies.

(4) What are Avista's opportunities to control these power supply costs? Which ones? For how long? In what manner?

14 For a more extensive list of material or significant factual issues, please see Attachment A for examples.

#### **IV. STAFF'S VIEW OF "KNOWN AND MEASURABLE" IS TOO CONSTRUCTIVE AND IGNORES COMMISSION PRECEDENT AND STATUTORY DEVELOPMENTS**

15 Staff's view of what is "known and measurable" for pro forma purposes is too narrow and runs counter to the Commission's recent practices and future direction.

16 To begin with, the Company recognizes, of course, that the Commission has not abandoned the use of a modified historic test period to set rates.<sup>16</sup> And both Staff and the Company agree that test period results of operations should be adjusted for known errors, for restatement and normalization purposes, and to give effect to all "known and measurable" changes not offset by other factors.<sup>17</sup>

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<sup>16</sup> Motion at ¶18.

<sup>17</sup> Motion at ¶18.

17 Staff acknowledges that the “2019 and 2021 amendments to the public service laws” grant the Commission “significant discretion” in ascertaining a utility’s rate-year expenses in the context of a multi-year rate plan.<sup>18</sup> This has allowed the Commission to exercise “significant discretion” over various pro forma adjustments to allow for a better “matching” of rate year revenues and expenses. That discretion has already been used to good effect under multi-year rate plans (MYRPs) for capital projects entering rate base during the rate-effective year. The need to relax the strict application of “known and measures” standards in this context of MYRPs, is part and parcel of the recent legislation. (RCW 80.28.425) That same discretion should apply to other costs as well (especially when other safeguards are in place (e.g., subsequent ERM review and rate adjustment)).

18 RCW 80.28.425, codifying the use of multi-year rate plans, stresses the importance of capturing levels of rate base and expense in each year of the Rate Plans, and these levels should include reasonable levels of power supply expense:

(3)(a) If it approves a multiyear rate plan, the commission shall ascertain and determine the fair value for rate-making rates for each of the initial rate year, the second-rate year and, if applicable, the third rate year, and the fourth rate year.

(b) The commission shall ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is or will be used and useful under RCW 80.04.250 for service in this state by or during each rate year of the multiyear rate plan. For the initial rate year, the commission shall, at a minimum, ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is used and useful for services in this state as of the rate effective date. The commission may order refunds to customers if property expected to be used and useful by the rate effective date when the commission approves a multiyear rate plan is in fact not used and useful by such a date.

(c) The commission shall ascertain and determine the revenues and operating expenses for rate-making purposes of any gas or electrical company for

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<sup>18</sup> Motion at ¶21.



each rate year of the multiyear rate plan. (Emphasis added)

19 Even without the benefit of recent legislation (supra), it has been long-established practice to go beyond “known and measurable” historical data, with necessary pro forma adjustments to power supply.<sup>19</sup>

20 The power supply pro forma adjustment is predicated on a methodology that includes multiple components recognizing that historical data is not appropriate for setting future rates. In his testimony, Mr. Kalich describes the complex interactions of the elements that go into a pro forma power supply adjustment.<sup>20</sup>

21 So what is Staff’s solution to a highly variable, volatile, if not, at times chaotic, power supply market? Staff would simply default to generic statements about “known and measurable” adjustments and avoid the difficult subject altogether. Avista, on the other hand, is sensibly suggesting a way to allow for the accurate capture of this volatility – one that makes use of five years of actual historical data and actual index prices and operations. It compares the average of five years’ actual data with “Forward (Forecast) Values” for each year, with the difference

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<sup>19</sup> The seismic shift to, and changes in, power supply costs, as of late, shows no signs of abating. This prompted Avista Witness Kalich to conclude:

Yet, if anything, after more than two decades of active participation in these processes, it seems the ability to forecast NPEs accurately grows more difficult each year because of the factors observed below. The landscape has changed dramatically and the factors are well beyond our control.

(Emphasis added) (Kalich, Exh. CGK-1T. at 24). Moreover, Avista is different from other utilities regulated by this Commission. It has large differences exposing it to greater NPE volatility, making the forecast very different: (1) extensive reliance on hydro resources within and between years; (2) surplus market positions leading to greater volatility as market conditions outside the Company impact surplus sales greatly, thereby subjecting the Company to ERM deadband exposure well beyond the intended sharing contemplated by the ERM deadbands. Kalich, Id. at pp. 25-29. This is in addition to obligations under the Washington Climate Commitment Act (CCA) which will produce greater market variations with respect to the costs and benefits of the Company’s generation portfolio. (Kalich, Id. at 30-31)

<sup>20</sup> Id.

characterized as a “portfolio forecast error adjustment.”<sup>21</sup> The 5-year average through 2022 equals the \$65.8 million adjustment being recommended in this case. (Kinney, Exh. SJK-1T at 68) All of this prompted Witness Kinney to conclude:

This isn’t something we have witnessed since 2018. In fact, a general trend exists illustrating how forecast error is increasing drastically over time. What used to be annual variation of \$10 to \$30 Million per year has become multiples of that in current markets. This is a value discrepancy the Company simply must reflect in its pro forma. (Kinney, Exh. SJK-1T at 68)

22 Staff suggests that Avista has abandoned any practice of actually modeling “the results, as was done with previous power supply adjustments.”<sup>22</sup> Avista chose to highlight this issue separately, rather than have it “buried” in the Aurora model. As explained by Avista Witness Kinney:

The Company decided it was better to show the value in testimony as a single adjustment rather than translate the results of the analysis into a price dataset that would bury the impacts within Aurora.<sup>23</sup>

23 In the interests of full transparency on this issue, Avista separated out this feature of the pro forma power supply adjustment (the “portfolio forecast error adjustment”). Moreover, it is well to recognize that this further modification (“portfolio error adjustment) to power supply expense is all part of the same overall pro forma examination of power supply expense that is, itself, a regular feature of rate case filings. It is not an adjustment outside of the overall power supply adjustment.

24 Incorporation of forecast “error” is not new. It has always been reflected in the overall power supply adjustment at some level and in some form; in this filing Avista has given it a name

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<sup>21</sup> See Kinney, Exh. SJK-1T, at 67.

<sup>22</sup> Staff’s Motion, ¶27.

<sup>23</sup> Kinney, Exh. SJK-1T, at 71.

– “portfolio forecast error adjustment.” The only difference this time around is the level of that “forecast error,” given the dramatic changes in market conditions. It is neither fair nor appropriate to “sever off” and remove from the case, through the Motion, a necessary type of adjustment (at some level) that has consistently been made in all prior power supply adjustments.<sup>24</sup>

25           While Staff purports to recognize the Commission’s “significant discretion in this area,”<sup>25</sup> by this Motion it essentially deprives the Commission of the opportunity to develop a record upon which to base that “discretion.” And, as noted, the Commission doesn’t even get to the point where it can pronounce approved rates “fair, just, reasonable and sufficient” until and after it has made the requisite Findings of Fact.<sup>26</sup> And yet, the Staff’s Motion would have this Commission declare “as a matter of law” that Avista’s adjustment is unreasonable, without even the benefit of a developed record to support that determination.

26           As mentioned, the Commission has been given the tools in the context of multi-year rate plans, to capture future costs in future periods, even though not yet fully “known and measurable” at the outset, so long as safeguards exist for later review and adjustment (e.g., ERM review). Moreover, flexibility in making pro forma adjustments has been extended well beyond the few customary adjustments for, e.g., new contracts, wage increases, etc.<sup>27</sup>

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<sup>24</sup> To be clear, Avista only called out and highlighted this adjustment as a “Portfolio Forecast Error Adjustment” to be transparent and give it the attention it deserves.

<sup>25</sup> Motion at ¶21.

<sup>26</sup> Motion at ¶10.

<sup>27</sup> Motion at ¶23.

## V. THE COMMISSION MUST GET THE ERM “BASELINE” RIGHT

27 Avista wishes to underscore the need to get the ERM baseline right; this is akin to getting “the first year right” in a multi-year rate plan.<sup>28</sup> Failure to do so merely pushes the inevitable cost burden forward in time, as actual power costs are reflected in yearly ERM filings.<sup>29</sup> As such, the ERM true-up serves as a correcting mechanism to capture actual costs that vary from the baseline (up or down); it also serves to capture any “offsetting” effects that actually occur.

28 Staff argues that the proposed “portfolio forecast error adjustment,” somehow “unfairly, unjustly, or unreasonably modifies the ERM.”<sup>30</sup> Staff asserts that, as a “matter of law,” 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 . . . .”<sup>31</sup> This Motion, however, does not take up that question of modifying the risk allocation established through the deadbands and sharing mechanism; that is a matter that remains set for hearing.

29 The assessment of the deadband and sharing mechanism of the ERM in terms of “risk allocation” cannot be viewed in isolation, however, from vastly changed conditions in the power supply market.<sup>32</sup> But to be clear, the deadband and sharing bands are not before the Commission in this Motion.<sup>33</sup>

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<sup>28</sup> Staff appears to acknowledge that “setting a proper baseline is necessary for the ERM to function as intended,” quoting from Wash. Utils. & Transp. Comm’n v. Avista Corp., Dkts. UE-170485, et seq., Order 07, 54, para. 160 (April 26, 2018). See ¶39 at p.16.

<sup>29</sup> Staff acknowledges that the ERM allows Avista to file true-up surcharges to recover or credit balance when costs vary beyond identified thresholds. (Motion at ¶10)

<sup>30</sup> Motion at ¶¶34-41.

<sup>31</sup> Motion at ¶34.

<sup>32</sup> The interplay of “risk sharing” and deadbands must be understood in the context of changing market conditions, requiring a factual investigation.

<sup>33</sup> Avista fully understands that the Commission recently rejected PacificCorp’s attempt to alter the sharing mechanism in its ERM. (WUTC v. PacifiCorp., Order 08, Dkt. No. UE-230172 (March 31, 2024)). Avista will still have the opportunity to address that issue in the context of this rate filing, and discuss notable differences between Avista and PacifiCorp.

30           At issue here is how to establish a meaningful “baseline” for the ERM until it is adjusted again in a future GRC. That question is intensely factual in nature and will remain so in each iteration of the ERM “baseline” in future GRC’s. The Commission should want to know about any fundamental shifts in the power supply market, either as to resources, pricing, availability and duration, and develop a record accordingly. Acceptance of Staff’s Motion would deprive the Commission of that very opportunity.

31           Simply put, when ultimately addressing any proposed changes to deadband or sharing mechanisms meant to address the “allocation of risk” within the ERM, one would want to know, in the first instance, how that universe of power supply risk has changed (or hasn’t) and how much of this risk can be controlled?

32           Next Staff asserts that Avista will “doubly insulate” itself from power cost variability.<sup>34</sup> And how is that? If Avista is correct (and it is entitled to inferences on its behalf, supra, for purposes of Staff’s Motion), it will have more accurately set the “baseline,” upon which the ERM sharing mechanism operates.

33           It is important to set the “baseline” correctly (a factual determination), for at least two reasons: (1) to assure proper and timely cost recovery and convey price signals regarding changes in power costs (especially important in a market with dramatic price changes); and (2) to assure that the “risk allocation” method still produces results that are fair and do not unduly benefit or penalize the Company, based on that which it can and can’t control. To give that some factual context, even if the actual sharing mechanism itself remains unchanged, Avista would bear (absorb) approximately \$10.2 million of lost margin in Washington, given the projected power

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<sup>34</sup> Motion at ¶39.

costs contained within its ERM “baseline.”<sup>35</sup> Put another way, \$10.2 million of lost margin is almost 2% of retail revenue. (Expressed another way, this, in and of itself, would reduce ROE by nearly 72 basis points.) The burden on Avista will be substantial.

34 Staff’s Motion argues that the adjustment “unfairly and unjustly or unreasonably favors Avista and undermines the incentive to control power costs.”<sup>36</sup> And Staff is asking the Commission to make that determination without any evidentiary record. These questions are fact-dependent: what are changing costs? Are they beyond Avista’s control? How would this affect Avista’s incentive to control power costs? Again, it is as if Staff wants to “skip a step” (the building of a record) and rush to a hasty conclusion around necessary adjustments to the ERM “baseline.” If Avista does not ultimately meet its burden of demonstrating why the ERM baseline should be adjusted for this “portfolio forecast error,” after a hearing and a chance to vigorously contest the positions of others who feel differently, so be it. At least the process will have been allowed to play out.

35 Staff pokes at Avista for giving the baseline “kind of a shove” by raising it by \$65.8 million, based on “speculative events” and in an arbitrary fashion. Only a hearing and full-fledged record will help determine that. That kind of discussion should prove to be of interest to the Commission. And yet, Staff still persists with the argument that this adjustment “deadens the incentive” to control costs. In a bit of hyperbole, Staff argues that the \$65.8 million shift in risk from Avista to its customers represents a “major deadening of the incentive to control costs.” Again, that very

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<sup>35</sup> Under the present ERM Sharing, assuming a starting spot of \$0 deferral:  
Portfolio Forecast Error (System) = \$65.8 million;  
Portfolio Forecast Error (Washington Share) = \$42.2 million;  
Avista absorbs Deadband of \$4 million, then 50% of next \$6 million, which is \$3 million, then 10% of the remaining \$32.2 million, which is \$3.2 million, for a total of \$10.2 million (\$4 million + \$3 million + \$3.2 million).

<sup>36</sup> Motion at ¶34.

issue is an issue meant for hearing.

36           At the end of the day, setting an appropriate ERM “baseline,” in light of all the facts and circumstances, remains an intensely factual exercise, after which the Commission can exercise its discretion in arriving at a fair allocation of risk.

37           Staff also faults Avista for not providing “offsetting factors” as part of its portfolio forecast error adjustment.<sup>37</sup> First, as discussed by Mr. Kalich, Avista started its power supply adjustment using the methodology set forth in Dockets UE-170485.<sup>38</sup> That methodology already takes into account offsetting factors – i.e., market prices, hydro conditions, natural gas transportation, etc.<sup>39</sup> All “offsetting factors” are already taken into account. It is the result of that methodology that demonstrates that the resulting level of power supply expense is not representative of the rate effective period based on new and emerging changes in energy markets.<sup>40</sup>

38           This too ignores the fact that the “true-up” within the yearly ERM review will, by its very nature, capture any offsetting factors that actually occurred. Moreover, Staff is forced to concede that the testimony of Mr. Kinney “discusses in some depth the ways that yearly variations in conditions surrounding Avista’s NPE can interact with each other to cancel out to some extent.”<sup>41/42</sup>

39           Staff does not seem to understand or appreciate the “offsets” to increased power costs; some occur naturally, and as a matter of course, during the “true-up” occurring during the annual

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<sup>37</sup> Motion at ¶14.

<sup>38</sup> See Exh. CGK-1T, p. 2, ll. 9-10.

<sup>39</sup> Id. p. 4, ll. 2-8.

<sup>40</sup> Exh. SJK-1T, p. 66, ll. 9-22.

<sup>41</sup> Motion at ¶32.

<sup>42</sup> Staff argues that Avista’s recent history of the recovery of power supply costs shows that any errors are more than cancelled out by other factors. (Motion at ¶33) First, this presents yet another question of fact for hearing. Secondly, it implicitly acknowledges that the self-correcting true-up mechanism of the ERM will account for any “offset” as a matter of course.

ERM review, and others are the result of actions taken by the Company through its hedging practices and resource optimization. Naturally occurring offsets through the annual ERM true-up reflect actual changes in load supply, hydro availability, generating unit availability and actual market pricing during the ERM review period, which can, in combination, offset some of the power supply increases in cost. Other “offsets” are the result of concrete steps taken by the Company. These include hedging practices and “resource optimization,” all of which produce “offsets” which are reflected in the power supply adjustment itself. The Company does what is feasible and cost-effective to achieve these “offsets” and welcomes further discussion of this in the hearing process. The Company’s efforts to achieve these “offsets” is discussed within the Company’s direct case.<sup>43</sup>

40           Lastly, Staff “trips” over its own argument, when, on the one hand, it argues that the “ERM itself is intended to allocate the risk of power cost variability,” and then references a footnote where it culls language from Avista Order 01 (in Dkt. UE-180261) at para. 1, in which it is stated that 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.” (Emphasis added) While Staff may characterize the proposed increase in the ERM “baseline” by \$65.8 million as “perverse,”<sup>44</sup> it would be more “perverse” to corrupt the ERM process to force an allocation of risk through deadbands that are supposed to operate on “ordinary” fluctuations in power costs (not on a \$65.8 million extraordinary fluctuation) from an accurate cost baseline. The Company welcomes this discussion at hearing and entry of “findings of fact”; this debate will not happen if Staff’s Motion is accepted.

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<sup>43</sup> See Exh. CGK-1T, p. 2, ll 9-10; p. 4, ll 2-8; Exh. SJK-1T, p. 66, ll. 9-22; and Exh. SJK-1T, p. 10 et.seq. (risk management); p. 50, l. 23 et.seq. and p. 62, l. 9 et.seq. (hedging)

<sup>44</sup> Motion at 39.



## VI. CONCLUSION

41           The Commission’s action on this Motion will have ramifications for future “process” before the Commission (the proper development of a record to support a decision) and, perhaps, even more significantly, the direction of future regulation, in terms of what it portends. The Commission has been working assiduously to make sure that rates are reflective of costs during the rate-effective period. Most notably, the MYRP legislation, as enacted into law (RCW 80.28.425), changed the regulatory construct to allow for recognition of costs that increase during a multi-year rate plan. And the early results have been promising; capital costs are included in rates as projects are placed into rate base during the rate plan (subject to a “true-up” and review after the fact). The same concept holds true with pro formed power supply costs, so long as there is a reasonable opportunity for a later “true-up” in the annual ERM review. That process will protect customers and the Company alike.<sup>45</sup>

42           Were Staff’s Motion to be accepted, this would run directly counter to what the Commission and legislature are working hard to achieve. It would not fairly allow for costs to be captured in rates that are reflective of conditions as they occur in the rate year. It would, in any event, surely send mixed signals to an investment community that is looking for reassurance that future costs will be reflected in future rates. And it would, at a minimum, lead to electric utilities only filing two-year rate plans given added risk.

43           To dismiss Avista’s adjustment out-of-hand, with no opportunity for a hearing, would have a chilling effect on investors who want to know that the utility has a reasonable “opportunity,”

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<sup>45</sup> Utilities are already understandably leery of proposing longer than a two-year rate plan, given future uncertainties. Filing at least every other year gives the utility a chance to “reset” its rates to better capture its ongoing costs as they are incurred. This will allow the “ERM baseline” established in a general rate filing to be reset periodically, every two years versus, e.g., every four years.

after the hearing, to recover its costs.<sup>46</sup>

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DATED at Spokane, Washington, this 9<sup>th</sup> day of April, 2024.

/s/ David J. Meyer

David J. Meyer, WSBA No. 8717  
Chief Counsel for Regulatory and Governmental Affairs  
Avista Corporation

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<sup>46</sup> Bank of America recently noted the “challenging nature of the Company’s regulatory jurisdiction” (p.1) and highlighted the following:

**Washington Staff challenge use of power cost assumption.** On 3/21 the UTC Staff submitted a motion for partial summary determination challenging the Company’s use of a pro forma power cost assumption in its January rate case filing. Staff is requesting that the commission determine that Avista may not make this adjustment (thus reducing the revenue insufficiency in its filing by \$42.183 million), but also may not incorporate the “Portfolio Forecast Error Adjustment” into the Energy Recovery Mechanism (ERM) baseline. The commission has allowed these adjustments in the past.

Bank of America Global Research, “U.S. Utilities and IPP’s,” at p.2, March 26, 2024,

## **ATTACHMENT A TO AVISTA'S ANSWER TO STAFF MOTION**

The following are examples of the kind of factual issues that should be explored at hearing.

This is not an exclusive list, nor are these issues listed in order of importance:

- How has clean energy legislation such as CETA, CCA, and other regional efforts changed the energy supply market, including its liquidity, resource adequacy and premiums over spot markets seen in the forward market? Does it lead to inefficiencies and higher and more volatile costs?
- How has the shift from a resource-sufficient position in the Northwest to a resource-neutral or deficit position created market uncertainty and forward price premiums?
- Is it more difficult to procure future energy through market transactions as utilities hold back capacity to meet uncertainty around peak load?
- Has new carbon emission policy created market uncertainty resulting in forward price premiums?
- Has Avista followed its risk management policy for all hedging and optimization transactions in a way that helps control power supply costs?
- How has the divergence of forward power and gas market prices affected the potential future value of Avista's thermal resources, and will modeled thermal plant benefits actually materialize based on what has been experienced in 2022 and 2023?
- How has the level of "forecast error" (which has always existed) changed with current market dynamics?
- Will multi-year rate cases lead to higher forecast error since base power supply expenses are set based on future market prices up to 40 months in the future?
- Is the power market liquid enough for Avista to lock in and capture all the future value of its resources at the beginning of the rate period?
- Given all of the current uncertainty (load growth, transition to clean energy, emission policy), is there a significant premium built into forward market prices?
- What is the impact of new load peaks experienced by Avista and others in the last 2 years on forecast parameters?

- How has the greater exposure to net power cost volatility due to half of Avista's portfolio being served with zero-cost hydro power been magnified by regional dynamics?
- What is the effect of not including an adjustment to modeled power supply?
- Has volatility at the Mid C been growing since 2020?
- How has the current market affected costs both inside or outside Company control?
- How might final rules for CCA "true up" by Ecology potentially expose Avista and its customers to significant costs not covered by allowance grants?
- Since 2018, is there a general trend illustrating how forecast error is increasing drastically over time?
- How will retirement of baseload coal and the more inefficient natural gas-fired plants in the West impact the marketplace of capacity and pricing?
- What is the incremental impact to the Company and its customers of incorporating (or not) the forecast error adjustment"?
- How has the sharp increase in surplus sales revenue from the thermal fleet been impacted by its sensitivity to relative prices of natural gas and electricity actually experienced in the market.