

**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 TO  
AVISTA’S ANSWER TO STAFF’S  
MOTION FOR PARTIAL  
SUMMARY DETERMINATION

**I. INTRODUCTION**

I. Whatever changes to its forecast or Energy Recovery Mechanism (ERM) Avista Corporation (the Company) believes are necessary to adjust to current market conditions, impermissibly biasing forecast models in favor of the Company is not just, fair, reasonable, and sufficient.<sup>1</sup> Avista’s answer raises no factual issues that need to be developed to evaluate whether using five-year average is an appropriate methodology for skewing power forecasts or altering ERM baselines. It is black letter law that where a party raises no genuine issue of material fact, summary determination is appropriate.<sup>2</sup> Because none of the factual issues identified are material to whether the Commission should deviate from its clear precedent against allowing utilities to use estimates or projections to prospectively recover \$65.8 million from ratepayers, the

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<sup>1</sup> *Wash Utils. & Transp. Comm’n v. Avista Corp.* Dockets UE-170485, et al. Order 07/02/02, ¶ 160 (Apr. 26 2018) (“setting a proper baseline is necessary for the ERM to function as intended.”).

<sup>2</sup> WAC 480-07-380; CR 56; *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601 (2009).

PUBLIC COUNSEL’S REPLY TO  
AVISTA’S ANSWER TO  
STAFF’S MOTION FOR SUMMARY  
DETERMINATION

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DOCKETS UE-240006 &  
UG-240007 (CONSOLIDATED)

Washington Utilities and Transportation Commission (Commission) should grant UTC Staff's (Staff) Motion for Partial Summary Determination as a matter of law.

## II. ARGUMENT

2. The specific legal question presented by Avista's proposed "portfolio forecast error" is whether the Company may bias its power forecasts in favor of over-collection of rates because of recent performance; it may not. When Public Counsel and Staff asked the Commission to adjust Avista's power projections after consistent over-collection of power costs for a 10-year period, the Commission declined, refusing to adjust for historic performance of the model.<sup>3</sup> The same result is compelled here.

3. Nothing in Avista's Answer changes this result. Articulating a number of factual questions such as the future performance of the energy markets, the accuracy of forward market prices, the factors driving variability in power costs, or Avista's ability to control power supply costs,<sup>4</sup> Avista suggests a five year of average forecast misses, "sensibly suggest[s] a way to allow for the accurate capture of this volatility."<sup>5</sup> Despite this unsupported assertion, Avista provides no principled argument for why this proposed "portfolio forecast error" adjustment would make power forecasts more accurate. Although Avista's study of average misses provides some information about the magnitude of past forecast errors the proposed adjustment does not explain the origin or causes of the errors, suggest a way to remedy or adjust the factors causing those

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<sup>3</sup> *Wash Utils. & Transp. Comm'n v. Avista Corp.* Dockets UE-170485, et al. Final Orders 07/02/02, ¶ 125 (Apr. 26 2018)

<sup>4</sup> Avista Corp's Answer to Staff's Mot. Partial Sum. Determ., ¶ 13 (filed Apr. 9, 2024) (hereinafter Answer).

<sup>5</sup> Answer ¶ 21.

errors, or provide any insight about how to avoid them. It does not even inform the Commission whether these errors led to under-collection of costs, as in three of the years, Avista had a net refund of power costs. The proposed portfolio forecast error makes no attempt to identify, quantify, explain, or incorporate factors driving variability of costs. It simply adds a margin in Avista's favor. In short, the factual issues Avista identifies are immaterial to how the "portfolio forecast error" is calculated, and adopting Avista's proposal will give the Commission no answers about how the current state of the energy market can be accurately incorporated into a forecast model. Avista's proposal to put a thumb on the scale based on prior performance is a methodology the Commission rejected in 2018.<sup>6</sup>

4. Avista's justifications for abandoning the Commission's precedent against using estimates in prospective rate collection, even those informed by experience, likewise fall flat. Avista's most concerning justification is that "incorporation of forecast 'error' is not new" and that Avista has reflected some adjustments "at some level and in some form" in every filing.<sup>7</sup> Initially, incorporation of bias in the past should rarely, if ever, excuse continued bias. Second, Avista denied that its forecast model had any bias in prior filings.<sup>8</sup> It is deeply troubling that Avista is now admitting that it may have, in fact, been biasing its projections all along. Whatever Avista's prior unsupported adjustments may have been, Avista's current "portfolio error adjustment" is not permissible under clear Commission precedent.<sup>9</sup>

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<sup>6</sup> *Avista Corp.*, Docket UE-170485, et al. Final Order 07/02/02, ¶ 125 (Apr. 26 2018).

<sup>7</sup> Answer ¶ 23.

<sup>8</sup> *Avista Corp.*, Docket UE-170485, et al. Final Order 07/02/02, ¶ 139 (Apr. 26 2018).

<sup>9</sup> *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG 090705 (*Consolidated*), Final Order 11 ¶ 26 (Apr. 8, 2010) (noting that adjustments to revenue, expense, or rate base, "typically cannot be an

5. Avista’s argument that it is unfair for the Company to bear the risk of \$10.2 million<sup>10</sup> cuts both ways. If Avista has a solution for better forecasting future energy prices or for altering the ERM sharing bands, that can be debated in the rate case. But the proposal at issue here is not an effort to better forecast costs; it is to re-allocate risk of Avista’s errors to ratepayers. Gaming the system to force ratepayers to pay an extra \$10.2 million because shareholder might lose 72 basis points on their return<sup>11</sup> is inequitable by every measure of common sense. Whatever control Avista has to hedge or to optimize its purchases dwarfs the control that ratepayers have. Biasing the forecast in favor of the utility is directly contrary to the statutory requirement of just, fair, reasonable, and sufficient rates. The Commission should reject, as a matter of law, Avista’s proposal to reallocate risk in this manner.

6. Avista’s argument that the true-up mechanism is an adequate safeguard also cuts both ways and does not change the result of this motion. Avista suggests, “the ‘true-up’ within the yearly ERM review will...capture any offsetting factors that actually occurred.”<sup>12</sup> The same is true for Avista’s actual costs, which are likewise recovered in annual filings. Avista is equally protected by the true-up mechanism. In reality, however, the true-up mechanism is no protection from bias within the ERM baseline. If the baseline is skewed as proposed by Avista, it will result in over-collection and ratepayers will bear the cost of the ERM sharing bands. Nothing about the

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estimate, a projection, the product of a budget forecast, or some other similar exercise of judgment—even informed judgment.”).

<sup>10</sup> Answer ¶ 33.

<sup>11</sup> *Id.* ¶ 33.

<sup>12</sup> *Id.* ¶ 38.

true-up mechanism justifies altering the Commission’s precedent requiring a high degree of analytical rigor.<sup>13</sup>

7. Further Avista is not prejudiced by the rejection of an impermissible methodology that would tip the scales in its favor. Avista, the parties, and the Commission can still develop a full record about the current energy market and whether it so extraordinary as to justify modifying the sharing bands or eliminating the ERM.<sup>14</sup> The parties can also litigate whether Avista should engage in hedging and resource optimization.<sup>15</sup> Staff’s motion is limited to rejection of a specific, analytically unsupported adjustment, not a limitation on the Commission’s ability to develop a full record about the current energy market. Where that adjustment is foreclosed by Commission precedent, there is no prejudice to Avista from acknowledging that via summary determination.

## V. CONCLUSION

8. Public Counsel asks the Commission to grant Staff’s Motion for Partial Summary Determination. No additional factual inquiry is necessary to reject a portfolio adjustment error lacking the necessary analytical rigor to adjust prospective rates. The Commission should reject Avista’s proposal to use a five-year average to skew its power forecast and the baseline of the ERM.

DATED this 6th day of May, 2024.

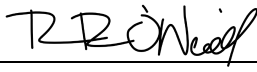
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<sup>13</sup> *Puget Sound Energy, Inc.*, Dockets UE-090704 & UG 090705 (*Consolidated*), Final Order 11 ¶ 26 (Apr. 8, 2010).

<sup>14</sup> Answer ¶ 40.

<sup>15</sup> *Id.* ¶ 39.

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