

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Complainant,

v.

AVISTA CORPORATION d/b/a AVISTA UTILITIES

Respondent.

DOCKETS UE-240006 and UG-240007 (*Consolidated*)

**RESPONSE TESTIMONY OF MARK E. GARRETT
ON BEHALF OF THE
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL UNIT**

EXHIBIT MEG-1T

July 3, 2024

RESPONSE TESTIMONY OF MARK E. GARRETT
DOCKET(S) UE-240006 AND UG-240007 (Consolidated)

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RESPONSE TESTIMONY OF MARK E. GARRETT
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EXHIBITS LIST

Exhibit MEG-2	Qualifications and Curriculum Vitae of Mark E. Garrett
Exhibit MEG-3	Electric Utility Revenue Requirement Accounting Schedules
Exhibit MEG-4	Gas Utility Revenue Requirement Accounting Schedules
Exhibit MEG-5	Federal Reserve Economic Data on Inflation Rates
Exhibit MEG-6	Avista's Response to Public Counsel Data Request No. 169
Exhibit MEG-7	Avista's Response to Public Counsel Data Request No. 182
Exhibit MEG-8	Avista Response to Public Counsel Data Request No. 194, with Attachment A

1 **I. INTRODUCTION / SUMMARY**

2 **Q. Please state your name and business address.**

3 A. My name is Mark Garrett. I am the President of Garrett Group Consulting Inc., an
4 Oklahoma based firm specializing in public utility regulation, litigation, and
5 consulting services. My business address is 4028 Oakdale Farm Circle, Edmond,
6 Oklahoma 73013.

7 **Q. By whom are you employed and in what capacity?**

8 A. I am an attorney and a certified public accountant. I work as a consultant in the
9 area of public utility regulation.

10 **Q. On whose behalf are you testifying?**

11 A. I am testifying on behalf of the Public Counsel Unit of the Washington Attorney
12 General's Office (Public Counsel).

13 **Q. Please describe your professional qualifications.**

14 A. I received my bachelor's degree from the University of Oklahoma and completed
15 postgraduate hours at the Stephen F. Austin State University and at the University
16 of Texas at Arlington and Pan American. I received my Juris Doctorate degree
17 from Oklahoma City University Law School and was admitted to the Oklahoma
18 Bar in 1997. I am a Certified Public Accountant licensed in the States of Texas
19 and Oklahoma with a background in public accounting, private industry, and
20 utility regulation. In public accounting, as a staff auditor for a firm in Dallas, I
21 primarily audited financial institutions in Texas. In private industry, as controller
22 for a mid-sized (\$300 million) corporation in Dallas, I managed the corporate
23 accounting function, including general ledger, accounts payable, financial

1 reporting, audits, tax returns, budgets, projections, and supervision of accounting
2 personnel. In utility regulation, I served as an auditor in the Public Utility
3 Division of the Oklahoma Corporation Commission from 1991 to 1995. In that
4 position, I managed the audits of major gas and electric utility companies in
5 Oklahoma. Before leaving the Oklahoma Commission I served as the personal
6 aide to Commissioner Bob Anthony. Since leaving the Oklahoma Corporation
7 Commission, I have worked on rate cases and other regulatory proceedings on
8 behalf of various consumers and consumer groups. I have provided testimony
9 before the commissions in the states of Alaska, Arizona, Arkansas, Colorado,
10 Florida, Indiana, Massachusetts, Montana, Nevada, New Mexico, Oklahoma,
11 Pennsylvania, South Carolina, Texas, Utah, and Washington. My qualifications
12 were accepted in each of those states.

13 My clients include large industrial customers, large gaming customers in
14 Nevada, large hospitals and hospital groups, universities, cities, large commercial
15 customers and solar industry interveners. I have also testified on behalf of
16 commission staffs and offices of attorneys general in the states of Indiana,
17 Nevada, Oklahoma, Washington, Florida and Utah. A more complete description
18 of my education and experience is provided in Exhibit MEG-2.

19 **Q. What exhibits are you sponsoring in this proceeding?**

20 A. I am sponsoring the following exhibits:

- 21 • Exhibit MEG-2 Qualifications and Curriculum Vitae of Mark E.
22 Garrett
- 23 • Exhibit MEG-3 Electric Utility Revenue Requirement Accounting
24 Schedules

Table 1: Summary of Revenue Requirement Impact of Adjustments Electric Utility (Millions)¹			
	YR1 Ending Dec-2025	YR2 Ending Dec-2026	Total
Company's Total Requested Increase	\$77,067	\$78,129	\$155,196
Cost of Capital Adjustment	(21,022)		
Deferred FIT Rate Base Adjustment	(29)		
Working Capital	32		
Remove Colstrip	248		
Restate Capital EOP	(538)		
Power Supply Adjustment	(44,458)		
AMI Amortization	75		
Executive Labor Expense	(63)		
Directors' and Officers' Insurance	(237)		
Miscellaneous O&M Expense	(5,624)		
Capital additions to 12.2023 EOP	(831)		
Capital Additions to 12.2024 EOP	(700)		
Board of Directors' Comp. Expense	(819)		
Prov. Capital Additions to 12.2025	(257)		
Investor Relations Expense	(201)		
Industry Association Dues	(252)		
YR-2 AMI Amortization		30	
YR-2 Pro Forma Misc. O&M Exp		(2,249)	
YR-2 Cap. Adds to 12.31.26 AMA		(929)	
Public Counsel's Total Proposed Adjustments	\$(74,676)	\$(3,149)	\$(77,825)
Difference	\$2,391	\$74,981	\$77,372

¹ See Mark E. Garrett, Exh. MEG-3 (Schedule 3.2 - Summary of Electric Utility Adjustments).

Table 2: Summary of Revenue Requirement Impact of Adjustments Gas Utility (Millions)²			
	YR1 Ending Dec-2025	YR2 Ending Dec-2026	Total
Company's Total Requested Increase	\$17,293	\$4,565	\$21,857
Cost of Capital Adjustment	(5,316)		
Deferred FIT Rate Base Adjustment	2		
Working Capital	6		
Restate Capital EOP	(124)		
AMI Amortization	21		
Executive Labor Expense	(20)		
Directors' and Officers' Insurance	(75)		
Miscellaneous O&M Expense	(778)		
Capital additions to 12.2023 EOP	(194)		
Capital Additions to 12.2024 EOP	(205)		
Board of Directors' Comp. Expense	(259)		
Prov. Capital Additions to 12.2025	(32)		
Investor Relations Expense	(60)		
Industry Association Dues	(140)		
YR-2 AMI Amortization		8	
YR-2 Pro Forma Misc. O&M Exp		(311)	
YR-2 Cap. Adds to 12.31.26 AMA		(170)	
Public Counsel's Total Proposed Adjustments	\$(7,172)	\$(473)	\$(7,642)
Difference	\$10,121	\$4,092	\$14,212

² See Garrett, Exh. MEG-4 (Schedule 4.2 - Summary of Gas Utility Adjustments).

1 **III. ADJUSTMENTS**

2 **A. Executive Pay Adjustment**

3 **Q. Did the Company propose a pro forma increase to executive payroll?**

4 A. Yes. The Company included pro forma adjustments to increase executive salaries
5 from the June 2023 levels to projected higher compensation levels for 2024. This
6 adjustment increased the Washington jurisdictional electric expense by \$60,000
7 and the Washington jurisdictional gas expense by \$19,000.³

8 **Q. Do you agree with the Company's proposed increases to its executives'**
9 **salaries?**

10 A. No. Avista's executives are already highly compensated, with 2023 base salaries
11 ranging from \$255,000 to \$884,000, before incentives.⁴ The test year levels
12 provide sufficient compensation. The Company has not demonstrated good
13 reasons that ratepayers should be burdened with nominal pay increases above the
14 test year levels.

15 **Q. Please discuss your concerns with the Company's request to increase its**
16 **executive payroll?**

17 A. Executive compensation levels for investor owned utility companies are of
18 particular concern because officers and directors of a corporation have legal
19 duties of loyalty and care to the corporation itself. Such corporate fiduciary duties
20 require these individuals to put the interests of the Company first.

21 Understandably, the interests of the Company and the interests of customers are

³ See Direct Test. of Kaylene J. Schultz, Exh. KJS-1T at 58:7–13.

⁴ See Schultz workpaper, *Avista Schedule 240006-07-AVA-Exh-KJS-2-Elec RR Model AMA 2025-2026-Long*, at Tab: E-3.06 PF Exec Labor, cells D29–D43.

1 not always the same, and at times, can diverge. This natural divergence of
2 interests creates a situation where not every compensation cost of executives is
3 presumed to be a necessary cost of providing utility service, and a sharing of
4 executive costs between shareholders and ratepayers is a common practice of
5 regulators around the country.

6 **Q. Would it be appropriate for the Commission to disallow a larger portion of**
7 **Avista's executive compensation?**

8 A. Most likely. Although Avista's executive base pay seems reasonable when
9 compared to other investor-owned utilities (IOUs) the pay levels seem high when
10 compared to other utility service providers, such as municipal utilities and
11 cooperatives (COOPs). As a general rule, IOUs, municipal utilities and COOPs all
12 provide safe and reliable utility services, but the executives of IOUs receive much
13 higher levels of compensation and a significant amount of their time and effort is
14 devoted to measures designed to increase shareholder wealth. The Commission
15 would be justified in requiring that some portion of Avista's executive
16 compensation be paid by shareholders rather than ratepayers.

17 **Q. Do you find that the compensation differences between IOUs, COOPs and**
18 **municipal utilities primarily occur in the top-level executive positions?**

19 A. In my experience, yes. The difference in compensation levels between the various
20 business forms is primarily in the pay of upper management and executive level
21 employees. The compensation levels of rank and file hourly employees seem to
22 be similar among the three types of entities providing utility service, and that is
23 likely the case of middle management as well. However, there seems to be a

1 material difference in pay at the executive level. When excessive levels of
2 executive compensation at IOU companies are found to exist, they should be
3 explained. To the extent there is a difference, and to the extent that difference
4 relates to time and attention directed toward growing shareholder wealth, that
5 difference should be excluded from rates.

6 **Q. Is it possible that the differences in compensation levels could be explained in**
7 **other ways?**

8 A. Differences in executive pay between the various forms of utilities could be
9 explained by economies of scale—employee levels, customer counts, generation
10 capacity—or other factors that could justify the differences for ratemaking
11 purposes. Moreover, investor-owned utilities might be able to show that
12 compensation paid for the profit motive is already removed from rates through
13 adjustments to long-term incentives, financial-based short-term incentives,
14 supplemental executive retirement plans and such. However, to the extent the
15 remaining differences cannot be shown to be necessary costs of providing utility
16 service, the differences should be excluded.

17 **Q. What is an appropriate action for the Commission to take regarding the top-**
18 **heavy salary structures for investor owned utilities?**

19 A. The Commission should open an investigatory docket to examine the differences
20 in compensations levels for executives at IOUs, municipalities and COOP
21 utilities. As an interim step, the Commission could require that the Company
22 provide, in its next general rate case, the inclusion of municipal and COOP
23 compensation data in its salary survey analysis to ascertain the extent to which

1 differences in executive pay may exist among these various forms of providing
2 utility service.

3 The question for regulatory commissions is how much of the
4 compensation of IOU executives is *necessary* for the provision of utility service
5 and how much of the compensation merely relates to the choice of business
6 structure, which includes considerable focus on maintaining stock price and
7 increasing shareholder wealth. Captive ratepayers should not be required to pay
8 the portion of IOU's executive salaries over and above the levels reasonably
9 required for the provision of service. Instead, the portion of IOU executive
10 salaries related to maintaining stock prices and maximizing shareholder wealth
11 should be paid by the shareholders that benefit from these activities.

12 **Q. What adjustments should be made to remove the requested increases in**
13 **executive salaries in this proceeding?**

14 A. Ratepayers should pay the test year salaries of Avista's highly compensated
15 executive position, but shareholders should assume the burden of the Company's
16 proposed payroll escalations. This is a very reasonable first step toward bringing
17 IOU executive compensation down to more reasonable levels that are comparable
18 with non-IOU utility service providers. The adjustment to remove the Company's
19 requested escalation of executive pay reduces the electric utility O&M expense by
20 \$60,000, as shown on Exhibit MEG-3, Schedule 3.3. The adjustment to remove
21 the Company's requested escalation of executive pay reduces the gas utility O&M
22 expense by \$19,000 as shown on Exhibit MEG-4, Schedule 4.3.

1 **B. Miscellaneous O&M Expense Adjustment**

2 **Q. Please describe the Company’s pro forma miscellaneous O&M expense**
3 **adjustments that impact rate year one (RY1) and rate year two (RY2).**

4 A. This adjustment reflects *pro forma* increases Avista made to specific Operations
5 and Maintenance (O&M) and Administrative and General (A&G) accounts from
6 the test year ending June 30, 2023, through RY1, effective in December 2024, and
7 through RY2, effective December 2025. These increases reflect the observed
8 percent increase in the expenses recorded in these accounts for 2018 through
9 2022. The Company increased those accounts at 6.3 percent and 4.57 percent
10 annually for its electric and natural gas operations, respectively.⁵

11 **Q. What do these specific O&M and A&G accounts represent?**

12 A. The Company escalated all O&M and A&G accounts, except for the following
13 expenses: 1) all labor and benefits, including, salaries, incentives, pension and
14 medical costs; 2) insurance expenses and amortizations; 3) IS/IT expenses; 4)
15 power supply costs; 5) Montana riverbed lease expenses; 6) Colstrip and CS2
16 major maintenance expenses; 7) wildfire related expenses; 8) administrative
17 expenses (office space charges); and 9) other expenses removed through restating
18 adjustments (i.e., miscellaneous restating, eliminate adder schedule balances, gas
19 supply costs, and revenue-related expenses). Avista had already proposed its pro
20 forma adjustments for RY1 and RY2 for these expenses.⁶

⁵ Direct Test. of Elizabeth M. Andrews, Exh. EMA-1T at 11:7–16. *See*, Schultz workpaper, *Exh. KJS-2 06.2023 WA Electric RR Model AMA 2025-2026 – Long*, at tab E-3.14, 5.06 PF Misc O&M, cell H3; Schultz workpaper, *Exh. KJS-3 06.2023 WA Natural Gas RR Model AMA 2025-2026 – Long*, at tab G-3.14, 5.06 PF Misc O&M, cell M4.

⁶ Andrews, Exh. EMA-1T at 11:16–12:1.

1 **Q. Do the Company’s annual escalation rates of 6.3 percent for electric and 4.57**
2 **percent for natural gas operations reasonably reflect current inflation**
3 **expectations through 2026?**

4 A. No. Avista’s annual escalation rates substantially overstate current inflation
5 expectations through 2026. The data that the Company relies upon to calculate
6 these escalation rates are greatly skewed as a result of the recent extraordinary
7 public health crisis—the COVID-19 pandemic. In early months of 2020, the U.S.
8 economy experienced a short period of deflation. Total demand fell as consumers
9 and businesses adjusted their spending in response to COVID-19 restrictions.
10 Then, as COVID-19 restrictions were lifted, pent-up demand and supply
11 constraints caused prices to rise at the fastest pace in over 30 years.

12 Exhibit MEG-5 shows the Personal Consumption Expenditure Price Index
13 (PCEPI) data, which is the Federal Reserve’s preferred measure of inflation.
14 These data show that inflation has been fairly stable over the past 30 years except
15 for the two years following the COVID-19 pandemic in which inflation spiked
16 dramatically. The data show that in the summer of 2021, inflation rates began
17 rising rapidly— from 4.4 percent in June 2021 to a high of 7.1 percent in June
18 2022. Since that date, however, the inflation rates have fallen steadily ranging
19 from 3.2 percent in June 2023 down to 2.5 percent in February 2024,⁷ as shown in
20 the table below.

21 //

22 ///

⁷ See Garrett, Exh. MEG-5, Table 3 (Federal Reserve Economic Data on Inflation Rates).

Table 3: Personal Consumption Expenditures Price Index (PCEPI)			
January 1994 - February 2024			
Source: Federal Reserve Economic Data - See Exhibit MEG-5			
Note: Jan 1994 to Dec 2019--(Monthly data not shown before 2020) Average Inflation Rate			1.8%
	MONTH	PCEPI	Year over Year % Change
Jun 2020	2020-01-01	104.458	1.7%
	2020-02-01	104.551	1.6%
	2020-03-01	104.238	1.1%
	2020-04-01	103.796	0.4%
	2020-05-01	103.890	0.4%
	2020-06-01	104.199	0.7%
	2020-07-01	104.541	0.9%
	2020-08-01	104.869	1.2%
	2020-09-01	105.048	1.2%
	2020-10-01	105.124	1.1%
	2020-11-01	105.197	1.2%
	2020-12-01	105.707	1.4%
Jan 2020 to Dec 2020 -- Average Inflation Rate			1.1%
Jun 2021	2021-01-01	106.145	1.6%
	2021-02-01	106.522	1.9%
	2021-03-01	107.066	2.7%
	2021-04-01	107.662	3.7%
	2021-05-01	108.207	4.2%
	2021-06-01	108.755	4.4%
	2021-07-01	109.280	4.5%
	2021-08-01	109.740	4.6%
	2021-09-01	110.096	4.8%
	2021-10-01	110.808	5.4%
	2021-11-01	111.494	6.0%
	2021-12-01	112.240	6.2%
Jun 2022	2022-01-01	112.829	6.3%
	2022-02-01	113.496	6.5%
	2022-03-01	114.446	6.9%
	2022-04-01	114.789	6.6%
	2022-05-01	115.446	6.7%
Jun 2022	2022-06-01	116.495	7.1%
Jun 2023	2022-07-01	116.511	6.6%
	2022-08-01	116.890	6.5%
	2022-09-01	117.314	6.6%
	2022-10-01	117.842	6.3%
	2022-11-01	118.104	5.9%
	2022-12-01	118.348	5.4%
	2023-01-01	119.011	5.5%
	2023-02-01	119.386	5.2%
	2023-03-01	119.530	4.4%
	2023-04-01	119.893	4.4%
	2023-05-01	120.020	4.0%
	Jun 2023	2023-06-01	120.221
Jun 2024	2023-07-01	120.373	3.3%
	2023-08-01	120.803	3.3%
	2023-09-01	121.267	3.4%
	2023-10-01	121.309	2.9%
	2023-11-01	121.296	2.7%
	2023-12-01	121.448	2.6%
	2024-01-01	121.906	2.4%
	2024-02-01	122.312	2.5%

1 **Q. What escalation rate do you use to forecast miscellaneous O&M expenses for**
 2 **2024 and 2025?**

3 **A. I calculated an annual rate of 2.5 percent as a more reasonable inflation**
 4 **expectation through 2026 for the Company’s electric and gas operations. As**
 5 **shown in Table 3 above, and as further detailed in Exhibit MEG-5, annual price**

1 increases have remained at or below the 2.5 percent rate for most of the past 30
2 years. Moreover, this 2.5 percent escalation rate is consistent with inflation
3 forecasts from numerous publicly available sources.⁸ The Federal Open Market
4 Committee (FOMC) which is responsible for setting and implementing monetary
5 policy has shown—and is expected to continue—a deep commitment to maintaining
6 a long-term 2.0 percent inflation rate.⁹

7 **Q. Please explain the reasons why the FOMC is committed to a monetary policy**
8 **that maintains a long-term 2.0 percent inflation rate.**

9 A. Since enactment of the Humphrey Hawkins Full Employment Act of 1978,¹⁰ U.S.
10 monetary policy has been driven by a so-called “dual mandate”—maximize
11 employment in a stable price environment.¹¹ Although the FOMC has tolerated
12 short-term deviations, it has shown a willingness and ability to use its authority to
13 maintain price stability. Most recently, the FOMC implemented a series of
14 increases in the federal funds rate¹² from zero to 5.25 percent since March 2022 to
15 bring price inflation down. The Company has also observed that the FOMC has

⁸ These publicly available sources include the following: Office of Management and Budget, Congressional Budget Office, Federal Reserve’s Open Market Committee, and several Federal Reserve Banks.

⁹ The FOMC prefers to use changes in the “personal consumption expenditure price index” (PCEPI) as its inflation metric. Unlike the “consumer price index” in which the U.S. Bureau of Labor Statistics calculates price changes from a static basket of goods and service, the U.S. Bureau of Economic Analysis uses a dynamic basket of goods and services to determine changes in the PCEPI. *see*, Board of Governors of the Federal Reserve Sys, *Statement on Longer-Run Goals and Monetary Pol’y Strategy*. Federal Open Market Committee. (Adopted effective Jan. 24, 2012; as reaffirmed effective Jan. 30, 2024).

¹⁰ Full Employment and Balanced Growth Act, 15 U.S.C. 58 §§ 3101–3152. (1978).

¹¹ In this context, the FOMC has interpreted “stable prices” as a long-term two percent annual increase in prices. Although legislation mandated a zero percent inflation rate within 10 years, most economists consider that a zero percent inflation rate would create significant hardship throughout the economy due to a too restrictive monetary policy.

¹² In this context, the “federal funds rate” refers to the interest rate at which depository institutions lend reserve balances to other depository institutions overnight on an uncollateralized basis.

1 acted aggressively to increase interest rates to bring inflation down to FOMC's
2 historical two percent target.¹³

3 **Q. Recent data suggest that year-over-year price inflation is edging closer to the**
4 **historic two percent target. Does the FOMC believe that its actions to date**
5 **are sufficient to bring price inflation back to two percent?**

6 A. No. Earlier this year, the FOMC re-affirmed its policy with the following:

7 The Committee judges that longer-term inflation expectations that
8 are well anchored at 2 percent foster price stability and moderate
9 long-term interest rates and enhance the Committee's ability to
10 promote maximum employment in the face of significant economic
11 disturbances. In order to anchor longer-term inflation expectations
12 at this level, the Committee seeks to achieve inflation that averages
13 2 percent over time.¹⁴

14 In addition, the FOMC chair, Jerome Powell, stated in prepared remarks at
15 a recent press conference:

16 My colleagues and I are acutely aware that high inflation imposes
17 significant hardship as it erodes purchasing power, especially for
18 those least able to meet the higher costs of essentials like food,
19 housing, and transportation. We are strongly committed to returning
20 inflation to our 2 percent objective.... We remain committed to
21 bringing inflation back down to our 2 percent goal and to keeping
22 our longer-term inflation expectations well anchored. Restoring
23 price stability is essential to set the stage for achieving maximum
24 employment and price stability over the long term.¹⁵

25
26 **Q. What adjustments would you make to the Company's miscellaneous O&M**
27 **expenses for its electric operations?**

28 A. The adjustments to reduce the electric utility's O&M escalation rate to 2.5 percent
29 are shown on Exhibit MEG-3, Schedule 3.4. This reduces the revenue

¹³ Direct Test. of Kevin J. Christie, Exh. KJC-1T 3:28-4:1.

¹⁴ Board of Governors of the Federal Reserve Sys., *supra*.

¹⁵ Transcript of Chair Powell's Press Conf., *Federal Open Market Committee* at 2-4 (Mar. 20, 2024).

1 requirement by \$5.624 million for RY1 and by an additional \$2.249 million for
2 RY2.

3 **Q. What adjustments should be made to the Company's miscellaneous O&M**
4 **expenses for its gas operations?**

5 A. The adjustments to reduce the gas utility's O&M escalation rate to 2.5 percent are
6 shown on Exhibit MEG-4, Schedule 4.4. The revenue requirement impact is a
7 reduction of \$778 thousand for RY1 and an additional \$170 thousand for RY2.

8 **C. Industry Association Dues**

9 **Q. What amounts of industry association dues does the Company seek to**
10 **recover from ratepayers in this proceeding?**

11 A. Avista seeks recovery of \$240,204 for Edison Electric Institute (EEI) membership
12 dues and \$133,440 for American Gas Association (AGA) membership dues
13 incurred or allocated to the Company during the test year.¹⁶

14 **Q. Please describe your concerns with including industry association dues in**
15 **rates.**

16 A. In recent years, regulatory commissions and legislators across the country have
17 raised legitimate concerns that more stringent protections are needed to prevent
18 utilities from passing along the costs of political activities and industry self-
19 promotion to captive customers.¹⁷ When utility companies seek to recover
20 membership dues to industry associations such as the EEI and the AGA,

¹⁶ Garrett, Exh. MEG-6 and MEG-7 (Avista's Responses to Public Counsel Data Request No(s) 169 and 182).

¹⁷ See Joseph, Brian, *State Lawmakers Look to Keep Utils. Out of Politics*, LexisNexis State Net Insights (Mar. 18, 2024).

1 significant portions of those payments relate to political activities and lobbying
2 efforts to promote the electric and gas industries.¹⁸

3 **Q. Is it clear how much of the annual membership dues are spent to influence**
4 **legislation and promote the interests of the electric and gas industries as**
5 **opposed to public service efforts?**

6 A. No. Industry associations, such as the EEI and the AGA, provide an array of
7 services to members with significant overlap between those services which
8 advocate for their members' private interests and other services which serve the
9 public interest. Until the Company can make a clear distinction between these
10 services, and until recovery of these expenses are adjusted to remove all advocacy
11 efforts that these groups conduct for their members' private interests, the
12 Commission should disallow 100 percent of membership dues incurred by or
13 allocated to the Company during the test year.

14 **Q. Please describe the EEI.**

15 A. Organized in 1933, the EEI is the industry association that represents all U.S.
16 investor-owned electric companies. Its members provide electricity for nearly 250
17 million Americans and operate in all 50 states and the District of Columbia. In
18 addition to U.S. members, EEI has more than 70 international electric companies
19 as International Members, and hundreds of industry suppliers and related
20 organizations as Associate Members.

21 **Q. Please describe the AGA.**

¹⁸ See e.g., Weinmann, Karlee, *American Gas Association*, Energy and Pol'y Institute, <https://energyandpolicy.org/american-gas-association> (last visited July 1, 2024).

1 A. The AGA represents more than 200 energy companies that provide natural gas
2 service to 180 million Americans. AGA is a tax-exempt trade association
3 recognized as such by the IRS pursuant to Section 501(c)(6) of the Internal
4 Revenue Code (IRC) of 1986, as amended. AGA files a publicly available exempt
5 organization information return (Form 990) annually, as required by law.¹⁹

6 **Q. Do the EEI and the AGA self-report the percentage of a member's dues that**
7 **these organizations attribute to lobbying expenses?**

8 A. Yes. The U.S. Internal Revenue Service (IRS) denies a deduction for the amount a
9 trade or professional organization exempt under 501(c)(6) spends on lobbying.²⁰
10 Membership organizations that conduct lobbying may either: 1) Disclose to their
11 members what percentage of their dues are nondeductible because they are used
12 for lobbying; or 2) Pay a 35-percent proxy tax on lobbying expenditures.
13 Regardless of the method chosen, they must disclose the amount spent on
14 lobbying on their Form 990 informational returns. Most membership
15 organizations choose to report the nondeductible amount to their members.

16 **Q. Does the nominal percentage allocated to 'lobbying' as shown on its**
17 **membership dues invoice disclose the entire range of activities that promote**
18 **the private interests of the utility industry and its owners?**

19 A. No. The percentage of these industry associations' dues allocated to lobbying as
20 shown on their invoices is predicated on a very narrow definition for "lobbying"
21 as defined by IRS regulations. This allocation method may be appropriate for tax

¹⁹ See, ProPublica, *American Gas Association*, (see Fiscal Year 2021)
<https://projects.propublica.org/nonprofits/organizations/130431590> (last visited July 2, 2024).

²⁰ 26 U.S.C. § 162(e) (1977).

1 reporting purposes, but the IRS lobbying definition is not sufficient to determine
2 how much of EEI's and AGA's efforts are more appropriately described as
3 advocating for its members' private interests to federal, state, and local officials
4 and policymakers.

5 **Q. In which Federal Energy Regulatory Commission (FERC) account does the**
6 **Company currently record its dues expenses for industry associations?**

7 A. After adjusting for the self-reported lobbying percentage, the Company typically
8 records the remaining expenses in FERC Account Number 930.2 for
9 miscellaneous general expense, as "Dues - Industry association dues for company
10 memberships," that are customarily "above the line" expenses and presumptively
11 recoverable from its customers.²¹

12 **Q. Should Avista instead record EEI and AGA dues in FERC account number**
13 **426.4?**

14 A. Yes. As described in greater detail below, a clear distinction does not exist
15 between these industry associations' advocacy on behalf of members' private
16 interests and other services these organizations perform which serve the public
17 interest. The Company records expenses in FERC Account 426.4 incurred for the
18 purpose of influencing public opinion with respect to the election or appointment
19 of public officials, referenda, legislation, or ordinances (either with respect to the
20 possible adoption of new referenda, legislation or ordinances or repeal or
21 modification of existing referenda, legislation or ordinances) or approval,
22 modification, or revocation of franchises; or for the purpose of influencing the

²¹ 18 CFR §367.9302 (2024).

1 decisions of public officials. For expenses recorded in FERC Account 426.4,
2 Avista bears the burden to substantiate that these expenses are appropriate for
3 recovery from customers. Otherwise, these expenses are recorded “below the
4 line” and presumptively not recoverable from customers. This account does not
5 include expenditures that are directly related to appearances before regulatory or
6 other governmental bodies in connection with Avista’s existing or proposed
7 operations.²²

8 **Q. Has the U.S. FERC taken action regarding the regulatory treatment for**
9 **industry association dues?**

10 A. Yes. Although the FERC has not clearly drawn a distinction between recoverable
11 public outreach/educational expenses and unrecoverable lobbying/advocacy
12 expenses, it has opened an investigatory docket to address the concern that
13 captive customers should not be required to pay industry association dues.²³
14 FERC’s Notice of Inquiry (NOI) requested input to better understand the nature of
15 industry association expenses included in Account 930.2, and to consider other
16 potential Uniform System of Accounts (USoA) amendments to protect consumers
17 from paying for activities that principally serve private interests, rather than the
18 public interest. A recent appellate court decision found that *indirect* influence
19 expenses (*e.g.*, industry associations that provide public policy advocacy services
20 on behalf of dues-paying members) should be recorded in Account 426.4.²⁴ In

²² 18 CFR § 367.4264 (2005).

²³ *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*. Notice of Inquiry at 5, Docket No. RM22-5-000, 86 Fed. Reg., ¶ 72,958 (2021) <https://www.govinfo.gov/app/details/FR-2021-12-23/2021-27784/summary>.

²⁴ *Newman v. FERC*, Docket No. 20-1324, 22 F.4th 189, 2021 U.S. App. LEXIS 38373 (D.C. Cir. Dec. 28, 2021).

1 their comments, several customer groups, non-utility competitors, and issue
2 advocates asserted that customer-financed legislative and regulatory advocacy
3 provides an uneven playing field that promotes private interests over the public
4 interest.

5 **Q. Did consumer advocates submit comments to the FERC's NOI?**

6 A. Yes. Consumer advocates in at least 16 jurisdictions filed comments regarding the
7 lack of transparency in the delineation between industry associations serving their
8 members' private interests and the public interest. For example, in a joint filing,
9 consumer advocates from California, Connecticut, Delaware, Maryland,
10 Massachusetts, Michigan, Minnesota, Oregon, and Rhode Island indicated that
11 each advocate has an interest in "ensuring that captive ratepayers [in their
12 respective states] are not charged for political and public advocacy expenses that
13 do not provide ratepayer benefits and that may be contrary to ratepayer
14 interests."²⁵ The joint filing called for a more detailed, transparent review of the
15 activities that industry association dues fund to ensure rates that are just and
16 reasonable. At a minimum, a utility should substantiate its requests for recovery
17 of industry association dues with categorical breakdowns of industry associations'
18 activities and clear connections between the items for which the utilities seek
19 recovery and ratepayer benefits.²⁶

²⁵ See, *Rate Recovery, Reporting, and Accounting Treatment of Industry Association Dues and Certain Civic, Political, and Related Expenses*, Docket No. RM22-5-000, Comments of State Agencies, at 8 (FERC, Feb. 8, 2022) (citation omitted).

²⁶ *Id.* at 20.

1 **Q. Is this Commission bound by any FERC determination regarding the**
2 **recovery of industry association dues from captive utility customers?**

3 A. No. Each regulatory commission has the authority to determine whether its
4 ratepayers will be required to fund the utility’s elective industry association dues.
5 The information regarding FERC’s NOI proceedings merely highlights the
6 widespread concern over whether it is appropriate for captive customers to be
7 required to fund the elective association activities that promote the interests of the
8 utility industry and its shareholders.

9 **Q. Have other state public utility commissions disallowed industry association**
10 **dues associated with advocacy activities?**

11 A. Yes. There are a number of state regulatory commissions that have recently
12 disallowed industry association dues,²⁷ including Kentucky,²⁸ Minnesota,²⁹ and
13 California³⁰ and Oregon.³¹ These commissions have disallowed all or part of a
14 utility’s trade or industry association dues expenses because the utility could not
15 show that such expenses were required or necessary for the provision of utility

²⁷ See e.g., Direct Test. and Schedules of Karlee Weinmann, at 14-19. *In re Northern States Power Co., for Authority to Increase Rates for Natural Gas Service in Minn.* Docket 23-2500-39704 (Minn. Pub. Util. Comm’n, Apr. 19, 2024).

²⁸ *In re Ky. Utils. Co. for an Adjustment of Its Electric Rates*, Case No. 2020-00349, Order at 28 (Ky. Pub. Serv. Comm’n June 30, 2021); *In re Louisville Gas and Electric Co. for an Adjustment of its Electric and Gas Rates*, Case No. 2020-00350, Order at 30 (Ky. Pub. Serv. Comm’n, June 30, 2021).

²⁹ *In re Otter Tail Power Co. for Authority to Increase Rates for Electric Service in the State of Minn.*, Docket No. E-017/GR-20-719, Findings of Fact, Conclusions, and Order (Minn. Pub. Util. Comm’n Feb. 1, 2022). see also, *In re CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Gas Rates in Minnesota*, Findings of Fact, Conclusions of Law, and Order, Docket No. GR-15-424 (June 2016).

³⁰ *App. of S. Ca. Edison Co. (U338E) for Authority to Increase its Authorized Revenues for Electric Service in 2021, among other things, and to Reflect that Increase in Rates*, Application 19-08-013, Decision on Test Year 2021, Decision 21-08-036 (Cal. Pub. Util. Comm’n, Aug. 20, 2021).

³¹ *In re Avista Corp., Request for a General Rate Revision*, Order No. 23-384 (Or. Pub. Util. Comm’n, Oct. 2023).

1 service. Furthermore, Louisiana has recently opened an investigation to determine
2 whether recovery of such costs is appropriate.³²

3 **Q. Has federal legislation been introduced that would direct the FERC to**
4 **prohibit utilities from recovering dues and fees paid to trade and industry**
5 **associations, such as AGA, from Customers?**

6 A. Yes. In 2023, federal legislation was introduced that would direct FERC to
7 promulgate regulations that would, *inter alia*, prohibit a utility from recovering
8 direct or indirect expenses associated with political influence activities from its
9 customers. If enacted, FERC would also be directed to amend the USoA to
10 instruct utilities to record such expenses as presumptively not recoverable from
11 customers. The legislation specifically identifies “dues or fees paid to trade
12 associations or industry associations” as a political influence activity.³³

13 On August 23, 2023, the Energy and Policy Institute published an article
14 discussing the FERC NOI and legislative efforts aimed at increasing transparency
15 and fairness to utility customers regarding utility industry association dues.³⁴ The
16 article stated:

17 Regulated utilities have every right to engage in outreach to
18 influence public opinion on political issues. Presumptively,
19 however, they do not have the right to pass through the costs of this
20 outreach to their customers’ bills,” said Commissioner Allison
21 Clements at the time. “At a minimum it is a good housekeeping
22 exercise to ensure that customers are not inappropriately left footing
23 the bill for their utility providers’ political aims simply because they

³² La. Pub. Serv. Comm’n, *Open Session Minutes* (June 7, 2023)
<https://www.lpsc.louisiana.gov/docs/minutes/June%207%202023%20Minutes.pdf>.

³³ Ethics in Energy Act, H.R. Bill 5075, 118th Cong 1st Sess. (2023).

³⁴ Kasper, Mark, *Legislation Introduced by Rep. Kathy Castor Instructs FERC to Ban Utilities from Using Ratepayer Dollars for Political Activities*, Energy and Policy Institute (Aug. 2, 2023).

1 were taken on by a trade association instead of the regulated entities
2 themselves.

3 ***

4 Commissioner Mark Christie said, “Nothing keeps the monopoly
5 from spending money on First Amendment protected speech,
6 including lobbying legislators and related public-relations activities,
7 but its investors should pay those costs, not captive customers. That
8 is the issue implicated by this NOI, which seeks to better understand
9 whether costs permitted to be “above the line” (chargeable to
10 customers) and those required to be “below the line” (chargeable to
11 investors) for privately-owned companies are being treated as such
12 on a transparent and consistent basis.³⁵

13 **Q. Has there been state legislation enacted that prohibits the recovery of trade**
14 **or industry associations’ dues?**

15 A. Yes. Colorado,³⁶ Connecticut,³⁷ New York,³⁸ and Maine³⁹ have each enacted
16 legislation that prohibits its jurisdictional utilities from recovering the expenses
17 for trade or industry association dues from retail customers.

18 **Q. Are you aware of any public comment regarding the Company’s**
19 **participation in the AGA?**

20 A. Yes. A coalition of 17 environmental groups have asked Avista to end its
21 membership in the AGA because such membership is not supportive of the
22 pledges the Company has made to begin decarbonizing and meet targets for
23 reducing state greenhouse gas emissions.⁴⁰ It does not serve the public interest for
24 customers’ funds to be used indirectly to oppose past commitments to which the

³⁵ *Id.*

³⁶ Colo. Rev. Stat. § 40-3-114(2)(g) (2023).

³⁷ Conn. Gen. Stat. § 16-243p(b)(3) (2023).

³⁸ N. Y. Stat. PBS § 334-114-a (2019).

³⁹ Rates of Pub. Utils. Ma. Rev. Stats. 35-A §302(2)(B) (2023).

⁴⁰ Baumhardt, Alex. *Environmental groups ask Oregon and Washington utilities to leave powerful gas lobby: More than a dozen environmental groups want Avista and Puget Sound Energy to end their membership with the American Gas Association*, Org. Capital Chronicle. (Oct. 5, 2023).

1 Company has already agreed. As shown, some services that the AGA provides its
2 members blurs the line between promoting the public interest and advocating
3 indirectly for its members' private interests.

4 **Q. What amount of industry association dues should the Commission exclude?**

5 A. The Commission should exclude 100 percent of industry association dues. Absent
6 a thorough audit of the industry associations' expenses, the Commission and
7 stakeholders will find it extremely challenging to distinguish between
8 expenditures for education of members and the general public and advocacy of its
9 members' private interests. Industry associations engage in advocacy for the
10 utility industries and their owners. Until the Company can demonstrate that its
11 request for recovery of industry association membership dues relates to customer
12 interests rather than lobbying and broader industry advocacy efforts, the
13 Commission should disallow the Company's requested recovery of industry
14 association dues. As shown on Exhibit MEG-3, Schedule 3.8, removal of EEI
15 dues reduces revenue requirement by \$252 thousand. The removal of AGA
16 membership reduces the revenue requirement by \$140 thousand, as shown on
17 Exhibit MEG-4, Schedule 4.8.

18 **D. Board of Directors' Compensation**

19 **Q. Please describe Avista Corporation's Board of Directors.**

20 A. Avista Utilities, an operating division of Avista, is comprised of regulated utility
21 operations in Washington, Idaho, Oregon, and Montana. Avista Utilities provides
22 electric distribution and transmission, and natural gas distribution services in parts
23 of eastern Washington and northern Idaho. Avista Utilities also provides natural

1 gas distribution service in parts of northeastern and southwestern Oregon. Avista
2 Utilities has electric generating facilities in Washington, Idaho, Oregon and
3 Montana. Avista Utilities also supplies electricity to a small number of customers
4 in Montana. Avista Utilities also engages in wholesale purchases and sales of
5 electricity and natural gas as an integral part of energy resource management and
6 its load-serving obligation.⁴¹ Its Board of Directors (Board) is comprised of 11
7 members which meet periodically throughout the year to set broad, strategic
8 direction for Avista. The positions of the Chairman of the Board and Chief
9 Executive Officer (CEO) are currently separate. Excluding the CEO, the
10 remaining board members meet the independence standards set by the New York
11 Stock Exchange. The Board also maintains six standing committees⁴² comprised
12 of independent directors to provide oversight over specific corporate functions. In
13 addition, the independent directors regularly meet in executive session outside the
14 presence of the CEO.⁴³

15 **Q. How is Avista's Board chosen?**

16 A. Each member of Avista's Board is chosen by its shareholders on an annual basis
17 to serve a one year term.⁴⁴

18 **Q. Does Avista mandate that the independent directors take action to align their**
19 **interests with the shareholders' interest?**

⁴¹ Avista Corp. *2024 Proxy Statement and Notice of Annual Meeting of Shareholders* at 4 (Mar. 20, 2024) (2024 Proxy Statement).

⁴² The Board's current standing committees are: 1) Audit; 2) Compensation and Organization; 3) Governance and Corporate Responsibility; 4) Finance; 5) Environmental, Technology and Operations; and 6) Executive.

⁴³ 2024 Proxy Statement, *supra*, at 1.

⁴⁴ *Id.* at 4.

1 A. Yes. Each independent director is expected to own Avista shares equal in value to
2 at least five times the equity portion of their retainer during their tenure on the
3 Board.⁴⁵

4 **Q. Do Avista’s customers have any role in the nomination and election of**
5 **Avista’s Board members?**

6 A. No. Customers have no role in the nomination and election of Avista’s Board
7 members.

8 **Q. What is the current regulatory treatment for Board of Directors’**
9 **compensation?**

10 A. The Commission’s prior decisions have allowed recovery of 90 percent of Board
11 of Director’s compensation.⁴⁶ Consistent with this prior precedent, the Company
12 reduced its recoverable Board compensation by nearly \$562,000 for its
13 Washington-electric jurisdiction and nearly \$178,000 for its Washington-gas
14 jurisdiction for the 12 months ended June 30, 2023.⁴⁷ Consistent with
15 Commission precedent, the Company is recovering 50 percent of its Board
16 compensation for this period. However, Avista is seeking to recover 90 percent
17 for the new multi-year rate period, which Avista states reflects a conservative
18 estimate of the breakdown between its utility and non-utility operations.⁴⁸

19 **Q. Do you agree with Avista’s allocation between utility and non-utility**
20 **operations?**

⁴⁵ *Id.* at 21.

⁴⁶ *See e.g., Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Docket UG-090135 and UG-060518 (Consolidated), Order No. 10, at 57-58 (Dec. 22, 2009) (hereinafter *Avista Corp Dockets*).

⁴⁷ Schultz, Exh. KJS-1T at 84:5–7.

⁴⁸ *Id.* 85:12–13.

1 A. Yes. Revenue collected from the utility's captive customers should not be used to
2 fund Avista's non-utility operations.

3 **Q. How are members of Avista's Board of Directors compensated?**

4 A. Members receive an annual retainer fee, payable in cash and Avista shares. For
5 the test period, the Board members were paid \$2,524,463 in total compensation
6 for Avista's Board members with \$1,219,763 in cash compensation and
7 \$1,304,700 in stock-based compensation during the historical test period.⁴⁹

8 **Q. Please describe your analysis regarding the recovery of the Board Members'
9 compensation allocated to the Company?**

10 A. After allocating the Board members' compensation between utility and non-utility
11 operations, I calculate that the Commission should disallow 50 percent of the
12 Board members' cash compensation and 100 percent of stock-based
13 compensation allocated to the Company in this proceeding for the following
14 reasons. First, the Board is primarily driven to maximize long term earnings
15 potential for its shareholders. Similar to other publicly-traded companies, the
16 Board's compensation should come from the value that the Board adds through
17 maximizing Avista's long-term earnings. The Board is selected by Avista's
18 shareholders, represents the shareholders, and its members have fiduciary duties
19 of care and loyalty to shareholders, which supersede any responsibility the Board
20 may have to the Company's customers. Finally, as shareholders themselves, the
21 Board of Directors are motivated to take actions that will increase the value of

⁴⁹ See, Schultz workpaper, 240006-07-AVA-Exh-KJS-2-Elec RR model AMA 2025-2026 at Tab E-3.20 PF BOD, at cells O7, O9, and O10.

1 their holdings, which may have a marginal, if any, impact on the provision of
2 service to customers. The adjustment to Board of Directors' compensation for the
3 electric utility is shown on Exhibit MEG-3, Schedule 3.6, which results in a
4 revenue requirement reduction of \$819 thousand. The adjustment for the gas
5 utility is shown on Exhibit MEG-4, Schedule 4.6, and results in a revenue
6 requirement reduction of \$259 thousand.

7 **E. Directors' and Officers' Liability Insurance**

8 **Q. What amount did the Company project for Director's and Officers' (D&O)**
9 **liability insurance in this proceeding?**

10 A. Avista projected a total of \$1,199,069 for D&O liability insurance in this
11 proceeding for its electric and gas operations.⁵⁰ Consistent with Commission
12 precedent, the Company is seeking 90 percent recovery of its allocated
13 jurisdictional share of these expenses.⁵¹

14 **Q. What is the purpose of Directors' & Officers' (D&O) liability insurance?**

15 A. D&O liability insurance generally protects the assets of a company's directors and
16 officers from the financial impact of litigation that results from their actions and
17 decisions taken on the corporation's behalf. D&O liability insurance also shields
18 shareholders, Board members and senior leadership alike against the impact of
19 legal action resulting from decisions of Avista's Board and senior leadership.⁵²

⁵⁰ Schultz workpaper, *Avista Schedule 240006-07-AVA-Exh-KJS-2-Elec RR Model AMA 2025-2026-Long*, at Tab: E-3.12 PF Ins, cell AW13.

⁵¹ Schultz, Exh. KJS-1T 70:15-16.

⁵² Martin M. Boyer, *Directors' and Officers' Insurance and Shareholder Protection*, (Mar. 2005), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=886504.

1 **Q. If an officer of Avista was found negligent in the injury of another party,**
2 **would it be appropriate to recover those costs from ratepayers?**

3 A. No. The costs of a director’s or officer’s negligent acts are not a necessary cost of
4 providing utility service. Moreover, since directors and officers have a fiduciary
5 duty to put the interests of shareholders first, some of the costs of their
6 compensation and benefits should be paid by shareholders. This would include the
7 cost of D&O liability insurance.

8 **Q. Please discuss the ratemaking policy reasons for the sharing of D&O**
9 **Liability insurance costs.**

10 A. D&O liability insurance protects not only the directors and officers of the
11 Company, but ultimately, the shareholders. Ratepayers should not be expected to
12 bear the full amount of D&O liability insurance, because as the Commission
13 correctly noted,

14 Avista’s directors owe a fiduciary duty to the corporation’s
15 shareholders to oversee with diligence and reasonable care the
16 actions of the corporation. Simply stated, the directors must act
17 *affirmatively and in good faith* (emphasis in original), to protect the
18 interests of the Company and its stockholders, and to refrain from
19 doing anything that would injure the Company or deprive the
20 Company of profit or an advantage that might properly be brought
21 to the Company for it to pursue. The directors owe no fiduciary duty
22 to protect the interests of the ratepayers.⁵³

23 Undoubtedly, the interests of the shareholders and the interests of customers are
24 not always the same, and at times, can be quite divergent. This natural divergence
25 of interests creates a situation where not every cost is presumed to be a necessary
26 cost of providing utility service.

⁵³ *Avista Corp Dockets*, at 57–58.

1 **Q. What is a reasonable allocation of these expenses between customers and**
2 **shareholders?**

3 A. An exhaustive study which allocates the benefits that D&O liability insurance
4 provides to both groups—customers and shareholders—would be cost prohibitive.
5 Moreover, the allocation of these benefits would change over time, and be
6 different from company to company. A 50/50 allocation between customers and
7 shareholders is reasonable because both groups benefit from the Company
8 holding D&O liability insurance.

9 **Q. Why do you calculate a 50/50 sharing of D&O liability costs rather than**
10 **recovering 90 percent of the costs from ratepayers?**

11 A. I calculate a 50/50 sharing of these costs because this allocation more closely
12 aligns with the benefits derived from the costs. Captive ratepayers should not be
13 required to pay the lion's share of expenses for which the primary purpose and
14 benefits are skewed in favor of the Board of Directors, senior leadership and
15 shareholders.

16 **Q. Are you aware of regulatory commissions in other jurisdictions that require**
17 **sharing of D&O liability insurance costs?**

18 A. Yes. I am aware that regulatory commissions in Arkansas, California,
19 Connecticut, Nevada, New Mexico, Florida, and New York have required the
20 sharing of these costs, as discussed below:

21 **Arkansas:** The Arkansas Public Service Commission (APSC) has for many years
22 required a 50/50 sharing of these costs between shareholders and ratepayers. In
23 the 2004 rate case of CenterPoint Energy/Arkla, the APSC found that because

1 shareholders receive the benefit of D&O liability insurance payouts, they should
2 bear a portion of the cost of buying the insurance.⁵⁴ Similarly, in the 2006 Entergy
3 rate case, the APSC stated:

4 The Commission agrees that ratepayers, as well as shareholders,
5 benefit from good utility management, which D&O Insurance helps
6 secure. However, as found in prior dockets, the direct monetary
7 benefits of D&O Insurance flow to shareholders as recipients of any
8 payment made under these policies. That monetary protection is not
9 enjoyed by ratepayers. The Commission therefore finds that,
10 because shareholders materially benefit from this insurance, the
11 costs of D&O Insurance should be equally shared between
12 shareholder and ratepayer.⁵⁵

13 **California:** The California Public Utilities Commission (CPUC) similarly ordered
14 a 50/50 sharing of D&O liability insurance costs in a case involving Pacific Gas
15 and Electric Company. The CPUC explained:

16 We reduce PG&E's D&O insurance forecast by 50%, resulting in a \$1.423
17 million reduction. Past Commission policy of equal sharing of cost
18 responsibility for D&O insurance should continue for this GRC [base rate
19 case]. In situations such as this, where a corporate service or product offers
20 separate benefits both to ratepayers and shareholders, imposing cost sharing
21 does not conflict with cost-of service ratemaking principles. By allowing
22 50% of such costs for ratepayer funding, we provide reimbursement for a
23 reasonable level of costs attributable to D&O insurance to the extent that
24 ratepayers benefit. It is not reasonable for ratepayers to bear all of the costs
25 related to D&O insurance when a share of those insurance benefits flow to
26 shareholders.⁵⁶

⁵⁴ See, *App. for a General Change or Modification in CenterPoint Energy Arkla, a Division of CenterPoint Energy Resources Corp. Rates, Charges and Tariffs*, Docket No. 04-121-U, Order No. 16 at 39–40 (Ark. Pub. Svc. Comm'n, Sept. 19, 2005).

⁵⁵ *App. of Entergy Ark., Inc. for Approval of Changes in rates for Retail Electric Service*, Docket No. 06-101-U, Order No. 10 at 70 (Ark. Pub. Svc. Comm'n, June 15, 2007). (Emphasis added).

⁵⁶ *App. of Pacific Gas & Elec.*, Application 12-11-009, 2014 Cal. PUC LEXIS 395 (Cal. P.U.C. Aug. 14, 2014).

1 **Connecticut**: In a 2014 Connecticut Light & Power rate case, the Connecticut
2 Public Utilities Regulatory Authority (CPURA) allowed recovery of only 25
3 percent of D&O liability insurance costs in rates. The CPURA stated:

4 The OCC agreed that DOL protects the officers of the Company
5 from lawsuits brought against them by shareholders that arise as a
6 result of decisions that they make while performing their duties.
7 Therefore, the shareholders, who receive the payout, are the
8 primary beneficiaries of this insurance. Ratepayers receive very
9 little of the benefit and should not be responsible for all of the costs.
10 ...The OCC noted that the Company failed to recognize that many
11 legitimate expenses (e.g., image building advertisements, lobbying
12 expenses) are not recoverable. . . The Authority finds no convincing
13 reason to deviate from its previous treatment of DOL insurance.
14 Consistent with the determinations in previous Decisions regarding
15 BOD expense and DOL expense, the Authority will allow only 25%
16 of DOL costs in rates.⁵⁷

17 **Nevada**: The Nevada Public Utility Commission (PUCN) has issued several
18 orders requiring a 50/50 sharing of D&O liability insurance costs between
19 shareholders and ratepayers. One such order was issued in a recent Southwest Gas
20 rate case. The PUCN stated:

21 The Commission agrees with Staff that D&O insurance benefits
22 both shareholders and ratepayers, and consequently, those costs
23 should be shared. Based on the foregoing analysis, the Commission
24 finds that a 50/50 apportionment of the cost of D&O Liability
25 Insurance between ratepayers and SWG is just and reasonable.⁵⁸

26 **New Mexico**: The New Mexico Public Regulation Commission (NMPRC)
27 addressed the issue of D&O liability insurance cost sharing in a recent El Paso
28 Electric rate case. The ALJ's Recommended Decision (RD) discussed why

⁵⁷ *App. of the Connecticut Light and Power Co., to Amend its Rate Schedules*, Docket No. 14-05-06, Order issued Dec. 17, 2014 at 76-77 (Conn. Pub. Util. Reg. Authority, 2014) (Emphasis added).

⁵⁸ *See, App. of Southwest Gas Corporation for Authority to Increase Rates*, Docket No. 18-05031, Modified Order, May 15, 2019, at 152 (Pub. Util. Comm'n of Nev, 2019). The PUCN has followed this ruling in later cases involving SWG. *See, App. of Southwest Gas Corp. for Authority to Increase Its Retail Natural Gas Util. Serv. Rates et al.*, Docket No. 20-02023, 2020 WL 6119350, at *86 (Nev. P.U.C. Sept. 20, 2020).

1 allocation of D&O liability insurance cost is consistent with balancing the
2 interests of ratepayers and shareholders. The ALJ stated:

3 What is unique about D&O insurance is that it is a cost specifically
4 incurred for directors and officers, who have a fiduciary duty to put
5 the interests of shareholders first. Therefore, the responsibility for
6 the cost of D&O insurance goes to the heart of the Commission's
7 obligation to balance the interests of shareholders and ratepayers.⁵⁹

8 **Texas**: The Texas Railroad Commission excluded 50 percent of Texas Gas
9 System's D&O liability insurance expense in Docket No. 9896 based on its
10 finding that both shareholders and ratepayers benefit.

11 It is reasonable to include 50 percent of TGS's requested amounts
12 for ... Directors' and Officers' Liability Insurance ... because both
13 shareholders and ratepayers benefit.⁶⁰

14 **Florida**: The Florida Public Service Commission exclude 50 percent of Gulf
15 Power's D&O liability insurance expense in Docket No. 110138-EI based on a
16 finding that customers and shareholders both benefit from D&O Liability
17 Insurance.

18 Based on the above, we find that both the shareholders and the
19 customers receive benefits from D&O Liability Insurance and that
20 the associated cost shall reflect this fact. As such, we find that D&O
21 Liability Insurance expense shall be reduced by \$58,133 (\$59,384
22 system) to share the cost equally between the shareholders and the
23 customers.⁶¹

24 //

⁵⁹ *App. of El Paso Electric Co. for Revision of its Retail Electric Rates*, Case No. 20-00104-UT, Recommended Decision (RD) issued Apr. 6, 2021, at 167 (New Mex. Pub. Reg. Comm'n, 2021). The treatment of D&O liability insurance was not raised as an exception, and the NMPRC adopted, approved and accepted the ALJ's RD in its Order Adopting Recommended Decision with Modifications, issued June 23, 2021, at 33-34.

⁶⁰ *In re Texas Gas Services*, Docket No. 9896, Final Order, OS-22-00009896 ¶ 74 (Tex. Railroad Comm'n, Jan. 19, 2023).

⁶¹ *In re Gulf Power Co., Fla. Pub. Serv. Comm'n*, Docket No. 110138-EI, Order No. PSC-12-0179-FOF-EI, at 100-101 (Fla. Pub. Serv. Comm'n, Apr. 3, 2012).

1 It is my understanding that the regulatory commission in New York⁶² has
2 also allocated these expenses on a 50/50 basis on the determination that
3 shareholders and customers both benefit from D&O liability insurance.

4 **Q. What allocation did you formulate for the recovery of D&O liability**
5 **insurance costs?**

6 A. I formulated a 50/50 cost allocation of the Company's portion of its D&O
7 liability insurance expense between its customers and shareholders. The
8 adjustment to remove 50 percent of the D&O liability insurance expense reduces
9 operating expense by \$237 thousand for the electric utility as shown on Exhibit
10 MEG-3, Schedule 3.5. For the gas utility, the adjustment to remove 50 percent of
11 the D&O liability insurance expense reduces operating expense by \$75 thousand
12 as shown on Exhibit MEG-4, Schedule 4.5.

13 **F. Investor Relations**

14 **Q. How does Avista distribute information to its shareholders?**

15 A. Avista competes in dynamic, global capital markets with companies within and
16 outside the utility industry. Avista maintains an investor relations unit to provide
17 publicly available information in various formats to existing and potential
18 shareholders in the investing community. For example, Avista's website⁶³
19 contains information which provides news releases, investor presentations, and
20 regulatory filings with the U.S. Securities and Exchange Commission (SEC). An
21 existing or potential shareholder can also download documents related to its

⁶² *Order Setting Electric Rates*. Cases 08-E-0539 and 08-M-0618., at 90–91 (N.Y. Pub. Serv. Comm'n, Apr. 24, 2009).

⁶³ Avista Corp, *Better Energy for Life*, <https://investor.avistacorp.com/> (last visited June 27, 2024).

1 Environmental, Social, and Governance (ESG) reports. Finally, an individual may
2 also access information of unique relevance to a shareholder, such as historical
3 share prices and dividend dates.

4 **Q. Are there other means in which Avista communicates with the investment**
5 **community?**

6 A. Yes. After Avista publishes its earnings results from the prior quarter, it will host
7 a conference call with equity analysts to provide a summary of the prior quarter's
8 earnings results as well as respond to questions regarding how specific actions or
9 decisions may impact its market value. In addition, Avista often participates in
10 investor conferences which allow for further communication with the investment
11 community.

12 **Q. What costs did Avista allocate to the Company for investor relations**
13 **expenses?**

14 A. Avista allocated \$496,930 to the Company for the test year ending June 30, 2023,
15 \$382,754 for the electric utility and \$114,176 for the gas utility to maintain these
16 communication channels with its existing and potential shareholders.⁶⁴

17 **Q. How do shareholders benefit from investor relations expenses?**

18 A. Shareholders do generally benefit through higher market capitalization values
19 when relevant information about Avista's current and future earnings and
20 investments are disseminated to the larger investment community in a timely
21 manner.

⁶⁴ Garrett, Exh. MEG-8 (Avista Response to Public Counsel Data Request No. 194, with Attachment A).

1 **Q. What is the appropriate regulatory treatment for the Company’s allocated**
2 **investor relations expenses?**

3 A. Shareholders and customers both benefit when the Company incurs expenses to
4 disseminate information about Avista’s current and future earnings and
5 investments to the larger investment community in a timely manner. Customers
6 benefit when the Company can access capital markets at a lower price.
7 Shareholders benefit through higher share prices. The Commission should
8 allocate these investor relations expenses on 50/50 basis between shareholders
9 and customers. For the electric utility, as shown on Exhibit MEG-3, Schedule 3.7,
10 this results in a revenue requirement reduction of \$201 thousand. For the gas
11 utility, as shown on Exhibit MEG-4, Schedule 4.7, this results in a revenue
12 requirement reduction of \$60 thousand.

13 **G. Power Supply Adjustment**

14 **Q. Does your alternate revenue requirement calculation include an adjustment**
15 **to the electric utility’s pro forma Power Supply?**

16 A. Yes. Public Counsel witness Robert Earle excludes the Company’s pro forma
17 adjustment to forecasted power supply expense as further described in his Direct
18 Testimony. This adjustment amount is shown on Exhibit MEG-3, Schedule 3.9,
19 and results in a \$44.5 million reduction of revenue requirement.

20 **H. Cost of Capital Cost Adjustment**

21 **Q. Do your alternate revenue requirement schedules include a cost of capital**
22 **adjustment?**

1 A. Yes. Public Counsel witness David Garrett's cost of capital calculations are set
2 forth in his Direct Testimony and are presented in Exhibit MEG-3, Schedule 3.10
3 for the electric utility, and Exhibit MEG-4, Schedule 4.9 for the gas utility.

4 **Q. Does that conclude your testimony?**

5 A. Yes.