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April 28, 2017

Mr. Derek Byrne, Clerk/Administrator
Washington Court of Appeals, Division II
950 Broadway, Ste. 300
Tacoma, WA 98402-4454

RE: *Washington State Attorney General's Office, Public Counsel Unit v. Washington Utilities
& Transportation Commission and Avista Corporation, d/b/a, Avista Utilities*
COA No. 48982-1-II

Dear Mr. Byrne:

Enclosed for filing, please find Public Counsel's Reply Brief and Proof of Service. Parties in this proceeding are being copied electronically with hard copies to follow via U.S. First Class Mail.

Please contact me if there are any difficulties with the documents.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa W. Gafken".

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NO. 48982-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

WASHINGTON ATTORNEY GENERAL'S OFFICE,
PUBLIC COUNSEL UNIT,
Appellant,

v.

WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, a Washington State Agency,
Respondent,

and

AVISTA CORPORATION, d/b/a AVISTA UTILITIES,
Intervenor/Respondent.

REPLY BRIEF OF APPELLANT PUBLIC COUNSEL

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I. INTRODUCTION

Appellant Public Counsel Unit, Washington Attorney General's Office (Public Counsel) submits this brief in reply to Respondents Washington Utilities and Transportation Commission (UTC) and Avista Corporation, d/b/a Avista Utilities (Avista). Public Counsel continues to request that the Court reverse and remand the UTC's final orders in this case. AR.¹ 686 – 800 (Order 05); AR. 1141 – 1154 (Order 06).

II. ARGUMENT

A. **Public Counsel's Argument that the Final Order Violates RCW 80.04.250 is Appropriately before the Court.**

The UTC argues that Public Counsel failed to argue that the attrition adjustments violate the "used and useful" requirement set forth in RCW 80.04.250 before the UTC and therefore is precluded from raising that issue on judicial review. UTC Br. at 25-28. The agency record, however, belies this argument. The issue was presented to the UTC.

Public Counsel raised the issue in its brief before the UTC: "With either Avista's or Staff's attrition analysis, the Commission would be required to approve capital investments that have not been demonstrated to be used and useful and trends that are not known and measurable."

AR. 378 (Public Counsel Brief).

¹ "AR" refers to Agency Record.

The Industrial Customers of Northwest Utilities (ICNU) raised the “used and useful” issue in its brief before the UTC:

[B]ecause the Company’s trending analysis does not produce actually known and measurable capital expenditures, the Commission cannot determine that such unknown capital expenditures are used and useful. “RCW 80.04.250 allows the Commission to determine for rate making purposes the value of property ‘used and useful for service in this state.’” But, according to the Supreme Court of Washington in POWER I, **the unknown and unmeasurable future capital expenditures represented by the Company’s proposed attrition adjustment do not satisfy the statutory “used and useful” requirement:** “Obviously, an uncompleted utility plant is neither employed for service nor capable of being put to use for service; therefore, such a plant is not ‘used and useful’ for service as required by RCW 80.04.250.”

AR. 452 (ICNU Post-Hearing Brief at 17) (footnotes omitted) (emphasis added). Like Public Counsel here, ICNU argued to the UTC that the trended, projected amount of utility plant subject to the attrition analysis was analogous to the uncompleted utility plant that the Washington Supreme Court found to violate RCW 80.04.250 in *People’s Org. for Wash. Energy Res. (POWER) v. Wash. Utils. & Transp. Comm’n*, 101 Wn.2d 425, 679 P.2d 922 (1984) (hereinafter “*POWER 84*”).

AR. 452-453 (ICNU Post-Hearing Brief at 17-18).

ICNU’s witness also testified on the record that rate base calculated from a trend, as with the attrition adjustments proposed in this

case, was not “used and useful.” AR. 6457-58 (Exh. No. BGM-1CT at 16:9-17:5). The witness testified that rates set based on trending would allow the utility to earn a return on capital expenditures that have not been determined to be prudent and in the public interest, and that such trended amounts of utility plant represented “an abstract layer of ‘padding’ added to rate base to reflect some future, unknown expenditure by the utility.” AR. 6457 (Exh. No. BGM-1CT at 16:10-13); AR. 6458 (Exh. No. BGM-1CT at 17:1-3). The witness further testified that “because it is not actually known what the attrition capital expenditure will be, [the UTC] has no basis to demonstrate that the inclusion of such unknown capital expenditures in rate base are used and useful.” AR. 6458 (Exh. No. BGM-1CT at 17:3-5).

A witness for Commission Staff testified at hearing that his attrition analysis did not make an assessment of whether or not any investment was prudent or whether it would be “used and useful.” Rather, the witness described the attrition adjustment as an “undistributed increase in revenue not associated with any specific plant,” accepting ICNU’s witness’s characterization. TR. 445:9-14 (McGuire); *see also*, AR. 453 (ICNU Post-Hearing Brief at 18).

Because parties raised the “used and useful” issue before the UTC through testimony and legal briefs, the UTC’s reliance on *King Cnty. v.*

Wash. St. Boundary Review Bd. for King Cnty., 122 Wn.2d 648, 860 P.2d 1024 (1993), is not persuasive. In that case, no testimony or legal argument was brought before the Board regarding the issue on review. By contrast, the issue of whether the Commission's application of attrition adjustments to Avista's electric and natural gas services violates RCW 80.04.250 is properly before this Court.

B. The Commission's Application of the Attrition Adjustments in this Case was Unlawful.

The Commission characterizes the used and useful standard as a principle that guides its discretion when it values utility property for ratemaking purposes. UTC Br. at 29. However, the statutory requirement that utility plant be used and useful for service in Washington is not merely a guiding principle, rather it is an explicit and deliberate statutory limit to the Commission's discretion.

Public Counsel does not contend that attrition adjustments are never lawful. Rather, Public Counsel contends that the specific attrition adjustments the UTC applied in this case fail to meet the "used and useful" requirement of RCW 80.04.250 because they rely on a projection of future utility plant. Opening Br. of Appellant Public Counsel at 23-24. Utility plant must be more than theoretically used and useful in order to be included in rates. *See Wash. Utils. & Transp. Comm'n v. PacifiCorp*,

Docket UE-050684, Order 04 (WUTC Apr. 17, 2006) (utility proposal rejected because the rates were based on a cost-allocation methodology that failed to comply with the used and useful standard of RCW 80.04.250).

1. An attrition adjustment is one tool available to the UTC that is intended to address a demonstrated trend of under-earning.

At its most basic, attrition (in utility ratemaking) is “[t]he year-to-year decline in a utility’s earnings caused by increased costs which are not offset by increases in rates and sales.” *In re: WUTC’s Investigation into Energy Conservation Incentives*, Docket U-100522, Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets, App. 7 (Nov. 4, 2010). “Attrition” has also been used to describe the circumstances where a utility’s expenses grow faster than its revenues. *Wash. Utils. & Transp. Comm’n v. Wash. Water Power Co.*, Cause No. U-82-10 *et al.*, Second Supplemental Order at 31 (WUTC Dec. 29, 1982); *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Cause No. U-83-33, Second Supplemental Order at 59-60 (WUTC Feb. 9, 1984); *Wash. Utils. & Transp. Comm’n v. Wash. Water Power Co.*, Cause No. U-83-26, Fifth Supplemental Order at 47 (WUTC Jan. 19, 1984). Attrition has been attributed to high inflation, high financing costs or

interest rates relative to embedded costs, large construction projects, vastly different rates of change in expenses and revenue, and deteriorating financial integrity. *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Cause No. U-86-02, Second Supplemental Order, 1986 Wash. UTC Lexis 7; *Wash. Utils. & Transp. Comm'n v. Wash. Water Power Co.*, Dockets U-81-15 & U-81-16, 1981 Wash. UTC LEXIS 3; *Wash. Utils. & Transp. Comm'n v. Puget Sound Power & Light Co*, Docket U-82-38, Order 03, 1983 Wash. UTC LEXIS 39.

The UTC has allowed attrition adjustments to rectify a demonstrated trend of under-earning due to circumstances beyond a utility's control. *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-111048 & UG-111049, Order 08 ¶ 489 (WUTC May 7, 2012). The UTC, in its final order here, held that utilities need only show that the alleged cause of attrition is beyond their control, but relieved utilities from the requirement to show extraordinary circumstances. Opening Br. of Appellant Public Counsel at 12.

Avista is unclear whether Public Counsel is challenging the UTC's ability to set a new attrition standard. Avista Br. at 35-36. To be clear, Public Counsel does not assign error to the UTC's *decision* to set a new attrition standard for attrition adjustments. Nor does Public Counsel assign error to the new standard articulated in this case. Rather, Public

Counsel assigns error to the UTC's *application* of the new standard as arbitrary and capricious.

The UTC exaggerates when it characterizes Public Counsel's argument as stating that attrition adjustments are "never lawful." UTC Br. at 27. There are many alleged causes of attrition and multiple methods of calculating an attrition adjustment. In an order approving a rate increase for Avista in 2012, the UTC recognized that there are multiple methods of calculating attrition. *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-120436 & UG-120437, Order 09 ¶ 77 (WUTC Dec. 26, 2012). In that order, the UTC noted that it was not endorsing any specific attrition methodology, assumption, or input, and also acknowledged that UTC Staff cautioned the UTC about using its analysis as a model for future attrition decisions. *Id.*

In this case, the UTC found the cause of attrition to be Avista's high level of capital expenditures, which was out-pacing its revenue growth. AR. 725, 729-730, 731-733 (Order 05 ¶¶ 109, 121, and 125-128). The UTC found that "Staff's approach, as adjusted and corrected by the Company, [provided] the most appropriate methodology *in this docket* for supporting an attrition adjustment." AR. 726 (Order 05 ¶ 111) (emphasis added). The methodology approved in this docket may or may not be appropriate in another docket.

Because it is well known that there are multiple potential causes of attrition and multiple methods of calculating attrition adjustments, characterizing Public Counsel’s argument as stating that attrition adjustments are “never lawful” is inapposite. The UTC’s legal error occurs from its application of the attrition adjustments in this case.

2. All actions taken by the UTC must comply with its enabling statutes.

This Court has held that administrative agencies are “creatures of the legislature with no inherent or common-law powers.” *Wash. Indep. Tel. Ass’n (WITA) v. Telecoms. Ratepayers Ass’n for Cost-Based & Equitable Rates (TRACER)*, 78 Wn. App 356, 363, 880 P.2d 50 (1994) (citations omitted). If an action is not authorized – either expressly or by implication – in an agency’s enabling statutes, the action “must be declared invalid despite its practical necessity or appropriateness.” *Id.*

The Supreme Court has held that the UTC’s broad authority to regulate public utilities is limited: “Although RCW 80.01.040(3) demands regulation in the public interest, that mandate is qualified by the following clause ‘as provided by the public service laws’” *Cole v. Wash. Utils. & Transp. Comm’n*, 70 Wn.2d 302, 306, 485 P.2d 71 (1971) (emphasis added). The Court further noted that “an administrative agency [like the UTC] must be strictly limited in its operations to those powers granted by

the legislature.” *Id.*; *see also TRACER*, 75 Wn. App. at 356 (alteration in original).

The Court determines the meaning and purpose of a statute *de novo*. While Courts give substantial weight to an agency’s interpretation of the law it administers, the agency’s interpretations are not binding on the Courts. *City of Pasco v. Dep’t. of Ret. Sys.*, 110 Wn. App. 582, 587, 42 P.3d 992 (2002); *Tucker v. Dep’t. of Ret. Sys.*, 127 Wn. App. 700, 705, 113 P.3d 4 (2015). The Court retains the ultimate authority to interpret a statute, and the Court will not defer to an agency where the agency’s determination conflicts with the statute. *Waste Mgmt. v. Wash. Utils. & Transp. Comm’n*, 123 Wn.2d 621, 627-628, 869 P.2d 1034 (1994).

As a matter of law, the UTC has no authority to include in rate base property that is not used and useful for service. RCW 80.04.250; *POWER 84*, 101 Wn.2d at 430-435. RCW 80.04.250 authorizes the UTC to determine for ratemaking purposes the value of utility property that is “used and useful for service in this state” and to exercise such valuation powers whenever it deems necessary under the public service laws. Although the UTC has broad discretion in determining the ratemaking methodology it will use when setting fair, just, reasonable, and sufficient rates under RCW 80.28.020, every action taken by the UTC must be lawful and comply with the public service laws.

Avista argues that the UTC considered what plant would be used and useful during the future rate year (the year rates from this proceeding would be in effect). Avista further argued that the projected plant would be completed utility plant when new rates go into effect. Avista Br. at 32-35. However, even Avista's argument requires that the UTC consider specific plant. Avista Br. at 35. The UTC is not able to consider specific plant when future plant is projected to calculate a revenue requirement. As recognized by a Staff witness, no specific projects were identified and no review was done to ensure that expenditures for plant were (or would be) prudently incurred. TR. 445:9-17 (McGuire).

The UTC is well aware of the limits that RCW 80.04.250 imposes on its discretion. In *PacifiCorp*, the UTC rejected the utility's proposed rate increase because the multi-state cost allocation methodology used to establish the rates did not comply with the used and useful statute. *PacifiCorp*, Order 04 ¶ 7. In that order, the UTC stated it had no way of knowing whether the plant that was allocated to Washington was benefiting Washington ratepayers. *Id.* ¶¶ 62 – 66. Similarly, the UTC rejected proposals by other parties because the alternative proposals represented "good faith 'guesstimates'" that failed to meet the used and useful standard. *Id.* ¶ 61. Avista's argument here that the UTC determined that the projected rate base of the attrition adjustment was

theoretically used and useful during the rate year fails in the same vein as the rate proposal in *PacifiCorp*.

Application of any ratemaking methodology must be lawful, regardless of its end result. Indeed, the “end results test” from *Hope*² does not enlarge the UTC’s statutory authority and cannot authorize the UTC to take action that is contrary to Washington law. In this case, the UTC’s actions unlawfully exceed its statutory authority to the extent that the UTC set Avista’s electric and natural gas rates based on utility plant that is not used and useful.

3. The attrition adjustments authorized by the UTC in this case violated RCW 80.04.250.

a. Escalated utility plant does not satisfy the used and useful standard.

The UTC’s application of the attrition adjustments to Avista’s electric and natural gas services is unlawful because it included escalation of utility plant based on trending analysis. This escalated amount is not associated with any identifiable utility plant and fails to meet the used and useful standard under RCW 80.04.250. As a result, the attrition adjustments, as applied in this case, are unlawful.

In determining the scope of an agency’s authority, the primary question is the intent of the legislature. *TRACER*, 78 Wn. App at 363. As

² *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944).

Public Counsel argued in its Opening Brief, RCW 80.04.250 is an unambiguous statute, and the meaning of “used and useful” can be determined from the wording of the statute itself. Opening Br. of Appellant Public Counsel at 25. To be used and useful, utility property must be employed for utility service to customers in Washington and be capable of being put to use for service. *POWER 84*, 101 Wn.2d at 430. Moreover, the UTC recently recognized that the utility must demonstrate quantifiable benefits to ratepayers for each resource to be included in rates. *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Docket UE-140762, Order 08 ¶ 166 (WUTC Mar. 25, 2015).

In this case, the UTC approved attrition adjustments that applied an escalation rate to Avista’s plant. As UTC Staff’s witness testified at hearing, no specific addition of plant was contemplated under the attrition adjustments and no evaluation of whether the projected plant was used and useful was conducted. TR. 465:11 – 457:11 (McGuire).

As Public Counsel explained in its Opening Brief, the UTC excluded the escalation rate only with respect to Avista’s electric distribution plant, but included all of Avista’s other plant (general plant, transmission plant, and intangible plant, and associated depreciation). Opening Brief of Appellant Public Counsel at 14; (*see* AR. 3882 (Exh. No. CRM-2 at 5:32-44 (components of net plant)); *compare with* AR. 891

(work papers to Joint Motion showing removal of distribution plant and associated depreciation at lines 35 and 41); *see* AR. 891 (work papers to Joint Motion, lines 32-44). For Avista’s natural gas plant, no exclusion was made and the attrition adjustment calculation escalated all of Avista’s plant. AR. 729 – 730 (Order 05 ¶¶ 121-123).

The escalated amount of utility plant fails the used and useful test under RCW 80.04.250. The escalated plant amount is simply a dollar amount that is included in the overall attrition adjustment calculation and included in customer rates. There is no evaluation of whether the anticipated capital expenditure amount is prudent, there is no actual utility plant in service, and the investment is not known and measurable. Without plant to identify and evaluate, the Commission can make no determination regarding whether that plant is used and useful. As a result, the UTC’s adoption of attrition adjustments that contain the escalated plant violates RCW 80.04.250.

b. The “end results test” does not shield the UTC from compliance with RCW 80.04.250.

The UTC and Avista argue that the “end results test” essentially inoculates the UTC from judicial review of its chosen ratemaking methodology. UTC Br. at 18; Avista Br. at 10-12. Under the end results test, the regulator is not constitutionally required to use a particular

methodology to reach a just and reasonable “end result.” *Hope*. While the UTC has broad discretion in choosing a ratemaking methodology, that discretion is constrained by its statutory authority.

In *POWER 84*, the UTC granted a rate increase that included recovery in rates for construction work in progress (CWIP) because the UTC was concerned about the utility’s ability to earn its return while it bore the construction costs. The UTC determined that including an allowance for construction work in progress was necessary to preserve the utility’s financial integrity. The Court reversed and remanded the UTC’s decision. *POWER 84*, 101 Wn.2d at 434-435.

Here, the UTC noted a concern about Avista’s ability to earn a future return, focusing on Avista’s future financial condition. *POWER 84* clearly states that consideration of the utility’s financial condition is irrelevant when including amounts in rates for plant that is not used and useful. The UTC states that it only considered Avista’s financial condition in deciding whether to grant an attrition adjustment. UTC Br. at 31. However, the UTC cannot separate the unlawful **calculation** of the attrition adjustment consisting of escalated utility plant from the **result** of that the adjustment. Simply put, if the end result stems from an unlawful methodology, then the *Hope* decision cannot save it.

Notably, the UTC's decision in *POWER 84* likely satisfied the end results test, but it did not prevent that case from being remanded by the Court because it failed to comply with the statutory used and useful requirement. The UTC has no discretion to approve rates that include amounts for plant that is not used and useful.

c. Use of historical data to calculate the escalation factor applied to utility plant does not mean that the escalated amount is used and useful.

The UTC argues that the attrition adjustments were calculated based on historical data that were used to determine the escalation factors, and this use of historical data provides evidence regarding how the utility's expenses will behave in the future. UTC Br. at 6-7. Because escalation of rate base violates RCW 80.04.250, how the escalation is calculated is not material.

Escalation of utility plant, whether it is based on historical data, regression analysis, budget projections, or some other measure, still results in an anticipated, projected amount of future utility plant. In any event, the UTC did not consider any specific capital investment in calculating the attrition adjustment. And, no actual utility plant provides a tangible or intangible benefit to Washington ratepayers. As a result, there is no actual plant that can be used and useful to provide service in Washington, as

required under RCW 80.04.250. Thus, the fact that the attrition analysis approved in this case used historical data is inconsequential.

C. The Commission was Arbitrary in its Application of the Newly Articulated Standard for Attrition Adjustments when Setting Avista’s Electric Rates.

The UTC has authority to articulate a new ratemaking standard, but it cannot apply the new standard arbitrarily and capriciously. In this case, the Commission arbitrarily and capriciously disregarded its new standard for attrition adjustments. The UTC’s use of attrition adjustments in the past or its broad discretion in choosing a ratemaking methodology (UTC Br. at 22; Avista Br. at 12) does not justify the UTC’s action in this case.

The UTC contends that it was justifiably concerned about Avista’s future earnings. UTC Br. at 35. This concern, however, does not cure the UTC’s error of arbitrarily and capriciously approving an attrition adjustment for Avista’s electric service. The UTC found that Avista failed to meet the new attrition standard: Avista did not show that the alleged cause of attrition was beyond its control. The alleged cause of attrition was increased capital spending, and the UTC was not convinced that Avista’s investments were beyond its control, “or required for the safe and efficient operation of its system.” AR. 732 (Order 05 ¶ 127).

The UTC acknowledged evidence favorable to granting an attrition adjustment offered by the utility and Commission Staff, but also highlighted its frustration about “continuing to authorize recovery for these significant capital investments, absent a complete demonstration by the Company of quantifiable benefits to ratepayers.” AR. 733-736, 737 (Order 05 ¶¶ 131-135, 141).

The UTC also recognized that Avista could be motivated to continue its high levels of spending:

We understand Avista’s contention that it operates in a challenging environment.... However, we also recognize there is risk to the Company’s ratepayers by embracing an attrition adjustment that may allow Avista to manage its capital expenditures without regard to rate impact, effective cost control, demonstrated benefit, or actual need, and only in reference to its own budgeted targets. Simply stated, we are concerned about authorizing a practice that simply projects future levels of expense and capital expenditures that **may...become a self-fulfilling prophecy** when there is an incentive for rates of capital expenditure to be driven by an effort to match earlier projections.

AR. 728-729 (Order 05 ¶ 119) (quotations and footnotes omitted) (emphasis added). It makes little sense for the UTC to worry on the one hand about Avista’s earnings ability and acknowledge that Avista’s elevated level of spending has not been justified on the other hand.

The inconsistency of the UTC’s reasoning was borne out in Avista’s 2016 rate case. In the UTC’s order in Avista’s 2016 rate case, the

UTC stated that, “Avista’s practice of spending up to its authorized revenue by ramping up expenditures late in the year to fund ‘shovel-ready work’ if any funds are available ... appears now to be the realization of the Commission’s earlier expressed concern ...” about the self-fulfilling prophecy of Avista’s elevated spending. *Wash. Utils. & Transp. Comm’n v. Avista Corp.*, Dockets UE-160228 & UG-160229, Order 06 ¶ 68 (WUTC Dec. 15, 2016). Additionally, the UTC recognized that “absent a showing of chronic under earnings ... and, indeed, undisputed evidence that the Company continues to earn at, near, or even in excess of, its authorized return, thus militates *against* the use of an attrition adjustment...” *Id.* ¶ 66 (emphasis added).

In this case, the UTC also argues that it gave effect to its concerns about Avista’s spending by removing escalation of its distribution plant from the attrition calculation. UTC Br. at 34. However, as discussed above, other plant remained escalated in the attrition calculation, in violation of Washington law. Additionally, the UTC did not find that Avista met the new standard with respect to the remaining utility plant. Rather, the UTC simply reasoned that the end results test allows it to exercise its discretion in choosing a methodology. The UTC erred because the methodology must still be lawful and may not be arbitrary and capricious.

D. The UTC Concedes that Remand is Appropriate with Respect to the Calculation Error Raised by Public Counsel.

The UTC concedes that remand is appropriate “to reevaluate the implementation of the power cost update.” UTC Br. at 37. The UTC acknowledges that the power cost update may be incorrectly reflected in the final calculation of Avista’s electric rates “if the error exists.” *Id.* However, the UTC also asserts that Public Counsel and other parties “may not have understood the model’s proper functioning.” The record demonstrates that the parties understood the model’s proper functioning, but the UTC’s ultimate calculation was erroneous.

The power cost update was provided as a result of a multi-party settlement that required Avista to update its power costs two months before rates went into effect. AR. 789 (Multi-Party Settlement Stipulation ¶ 5(a)). The update was provided by October 29, 2016, after the evidentiary hearing, although Avista had provided estimates of the update during the proceeding. The estimates and the updates were reflected outside the attrition model. AR. 1603 (Exh. No. KON-1T at 34:1-27 (Table 5, line 15)); AR. 276-282 (October 29, 2016, Power Cost Update); TR. 132:23 – 133:7 (Norwood; discussing calculations shown in Avista witness’s written testimony). Never once did a party advocating for an attrition adjustment run the power cost adjustment through the model.

Additionally, UTC Staff, in its Motion to Reopen, provided explicit detail regarding how the model was to function when the UTC's error became apparent. AR. 1058-1111 (Staff Motion to Reopen).

The attrition model was not designed to include the power cost update, but rather the power cost update was intended to be applied to the results of the model's calculation. This did not happen, and the power cost update was not properly reflected in rates. This inflated customer rates beyond the level found by the UTC to be fair, just, reasonable, and sufficient based on its rulings in Order 05. In Order 06, the UTC perpetuated the error by not correcting it.

III. CONCLUSION

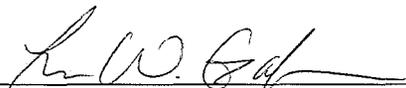
The UTC erred in setting Avista's electric and natural gas rates in three ways. First, the UTC exceeded its statutory authority when it included in rates the value of estimated amounts associated with future utility property that is not used and useful in providing utility service, in violation of RCW 80.04.250. Second, the UTC arbitrarily and capriciously granted an attrition adjustment in setting Avista's electric rates when it found that Avista failed to meet the new standard with respect to its electric operations but nonetheless granted a significant attrition adjustment. Third, the UTC arbitrarily and capriciously failed to correct a calculation error with respect to Avista's electric rates, even

though correcting the error would have been simple and timely. No party would have been harmed from setting a correct rate, but rates have been artificially inflated as a result of the error.

Therefore, this Court should reverse and remand this case.

RESPECTFULLY SUBMITTED this 28th day of April, 2017.

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PROOF OF SERVICE

NO. 48982-1-II

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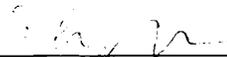
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 28th day of April 2017 at Seattle, WA.



CHANDA MAK
Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL
April 28, 2017 - 12:36 PM
Transmittal Letter

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