

**BEFORE THE PUBLIC UTILITY  
COMMISSION OF OREGON**

**LC 81**

In the Matter of

AVISTA CORPORATION, dba  
AVISTA UTILITIES,

2023 Natural Gas Integrated Resource Plan.

ALLIANCE OF WESTERN ENERGY  
CONSUMERS' COMMENTS ON STAFF  
FINAL COMMENTS

**Introduction and Summary**

Alliance of Western Energy Consumers (“AWEC”) appreciates the opportunity to provide comments in response to Staff’s Final Comments in Avista Corporation *dba* Avista Utilities’ (“Avista”) 2023 Integrated Resource Plan (“IRP”). As noted in Opening Comments, AWEC represents large energy consumers in the Pacific Northwest, including natural gas sales and transportation customers of Avista. Accordingly, AWEC is interested in ensuring that its members have access to safe, reliable, and competitively priced energy supplies and services and in promoting a healthy economy and environment in the Pacific Northwest and beyond.

As Staff correctly noted, as a result of the Climate Protection Program (“CPP”) regulations adopted by the Oregon Department of Environmental Quality (“DEQ”),<sup>1</sup> this IRP represented a major shift in Avista’s long-term resource planning, and its first attempt at optimizing resource alternative for satisfying the Oregon CPP’s declining emission caps.<sup>2</sup>

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<sup>1</sup> See OAR § 340-271

<sup>2</sup> Staff Final Comments Second Errata at 1.

The ongoing litigation surrounding the CPP, however, makes this IRP even more complicated. On December 20, 2023, for example, the Oregon Court of Appeals issued a decision which found that there were deficiencies in the DEQ's rulemaking process and held that the CPP rules were invalid.<sup>3</sup> The Environmental Quality Commission ("EQC") has the ability appeal this decision to the Oregon Supreme Court by January 24, 2024, and the rules stay in place until that time. If the EQC appeals, the rules stay in place during the appeal to the Oregon Supreme Court, unless the court stays the rule. The EQC could also decide not to appeal but rather to restart the rulemaking. Therefore, as of the date of these comments the immediate effect of the Oregon Court of Appeals' decision on the CPP rules is unknown.

**AWEC Recommends Avista Postpone CCP Compliance Actions Until Greater Certainty Regarding the Validity of the CCP Is Reached.**

Given the Oregon Court of Appeals' decision, there is significant uncertainty regarding the CPP. Accordingly, AWEC believes it would be appropriate for Avista to postpone making major investment decisions in CPP compliance, including the acquisition of community climate investments ("CCIs"), until greater certainty is reached regarding the applicability of the rules.

There are many possible outcomes of the ongoing litigation, and compounding the uncertainty is the fact that the Oregon Court of Appeals based its decision on a procedural rulemaking issue and made no decision on the substantive merits of the underlying lawsuit. It is possible that the Oregon Supreme Court could uphold the Oregon Court of Appeals' decision, or it is possible that the Oregon Supreme Court could overrule the decision finding that the rulemaking was done properly. It is also possible that the Oregon Supreme Court could remand the decision for further litigation on the substantive issues before the Oregon Court of Appeals,

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<sup>3</sup> *In re NW Natural vs EQC*, 329 Or App 648 (2023)

or the Oregon Supreme Court could decide to rule on the substantive issues.

AWEC does not believe it is prudent to prejudge the outcome of the litigation and, given the high cost of CPP compliance, and the potential harm to customers, AWEC recommends Avista not take CPP action until we have clarity on the lawsuit to avoid passing unnecessary costs onto ratepayers. Accordingly, the most prudent course of action is to postpone any major financial commitments with respect to CPP compliance where possible until the litigation is complete.

Regardless of the outcome of the litigation, however, the reduction of greenhouse emissions will continue to be an important aspect of Oregon state policy. Many of the energy efficiency and renewable natural gas (“RNG”) investments Avista has been evaluating in the IRP may be useful in advancing that policy, regardless of the outcome of the litigation. Therefore, considering the Oregon Court of Appeals’ decision, AWEC recommends that Avista continue to evaluate and engage in procurement processes for RNG, without making any immediate investments. This recommendation is consistent with Staff Recommendation 1, in which Staff recommended against acknowledging 8.64 million therms of RNG in 2023 and recommended requiring Avista to provide an RNG procurement update in its next IRP Update.<sup>4</sup>

While the validity of CPP rules is not certain at this time, AWEC believes that the Oregon Court of Appeals’ ruling represents a good opportunity for the state to reevaluate the CPP structure and to modify it to better protect ratepayers, including redesigning the program to be more consistent with the energy intensive trade exposed (“EITE”) industry programs in California and Washington cap and trade programs.

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<sup>4</sup> Staff Final Comments Second Errata at 14.

**AWEC Continues to Recommend Avista Engage in a Stakeholder Process to Evaluate and Mitigate the Impacts of CPP Compliance Costs on Energy Intensive Trade Exposed Industry.**

In Opening Comments, AWEC noted that the impacts of CPP compliance costs on EITE customers were expected to be significant. Accordingly, AWEC recommended Avista engage with stakeholders to discuss mitigating the impacts of the CPP on Oregon business.

In response, Staff agreed with AWEC's concern stating, "Staff remains concerned that the greatest CPP costs will fall on captive customers, such as Oregon's EITE businesses..."<sup>5</sup> Notwithstanding, Staff stated "Staff notes future rate cases as the space to resolve these concerns."<sup>6</sup>

AWEC disagrees that the impacts of the CPP on Oregon's EITE businesses is an issue that can effectively be dealt with in a rate case process. A rate case process is a venue where the prudence of Avista's CPP costs can be evaluated, but not a venue where the structure of the program and the corresponding treatment of EITE customers can be evaluated. AWEC believes a more holistic analysis and evaluation needs to take place with all interested stakeholders, and the status of the ongoing litigation is a good opportunity to evaluate changes to the program, including EITE protections, that will make it more viable for Oregon customers.

Planning for CPP compliance has proven to be challenging for natural gas distribution companies, such as Avista. The challenge is primarily due to the limited available compliance alternatives and aggressive emission reduction requirements. The only viable CPP compliance instruments that exist today are CCIs, RNG, and renewable hydrogen, and the cost of these instruments has proven to be excessive. Energy efficiency can also be used for CPP compliance because it reduces emissions.

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<sup>5</sup> *Id.* at 54.

<sup>6</sup> *Id.*

On a per MMBtu basis, the current cost of CCI's is approximately \$6.20/MMBtu and the cost of RNG ranges from \$15.00/MMBtu to \$50.00/MMBtu. This compares to an equivalent cost of \$2.06/MMBtu for compliance instruments in the California and Quebec carbon market,<sup>7</sup> a market which also has built in protections for EITE businesses. AWEC is concerned that the high costs of CPP compliance, relative to other states, will make it challenging to conduct business in Oregon, potentially driving investment in energy intensive processes out of the state. This is not sound policy. Both California and Washington have similar greenhouse gas policies, but their greenhouse gas programs have specific programs to protect EITE customers and the states' economy. Therefore, achieving Oregon's greenhouse gas objectives and protecting EITE customers are not mutually exclusive.

**AWEC Supports Staff's Recommendation for Avista To Consider the Marginal Emissions of Electrification.**

In Opening Comments, AWEC noted that electrification is a complicated issue that impacts both the gas and the electric system. AWEC noted the importance of considering the emission impacts of electrification policy in a wholistic manner, considering the impacts on both the natural gas and electric system.

Staff generally supported this recommendation, noting that while “[t]he CPP does not require LDCs to account for electric sector emissions,” Staff found “value in trying to understand emissions assumptions across energy sectors.”<sup>8</sup>

AWEC was particularly interested in evaluating the emissions impact of electrification on a marginal basis, rather than an average basis. Such an analysis might have both short-term marginal and long-term marginal impacts. In the short-term, increased demand on the electric

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<sup>7</sup> Based on November 2023 Auction price of \$38.73/MTCO<sub>2</sub>e

<sup>8</sup> Staff Final Comments Second Errata at 37.

system from electrification will result in increased dispatch from the marginal electric resource, which will likely be a highly emitting thermal resource. Thus, the short-term impacts of electrification may be contrary to Oregon state policy. In the long-term, however, the analysis becomes more complicated, involving new resources and transmission investments being built to accommodate the incremental electrical load. Balancing the short-term and long-term marginal effects of a policy such as electrification is, therefore, an important consideration. It is not sound greenhouse gas policy, for example, to increase greenhouse gas emissions today, with the expectation that new carbon free electric resources will be built in the future to offset those marginal emissions. Because carbon dioxide remains in the atmosphere for an extended period, reducing near-term emissions is important for the long-term goals of a greenhouse gas policy.<sup>9</sup>

Staff supported the notion that marginal emissions should be considered in a holistic analysis of electrification emission impacts. While Staff did not recommend considering such marginal emissions in Avista’s ongoing IRP, it suggested “that the forthcoming OPUC process to update its IRP guidelines may be the best place to address accounting for emissions assumptions across energy sectors.”<sup>10</sup> In general, AWEC is supportive of this recommendation, which is generally consistent with AWEC’s recommendation in Opening Comments.

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<sup>9</sup> See e.g. Betram, et. al., *A Path to Zero*, International Monetary Fund, Finance and Development at 58 (Sep. 2021). Available online at <https://www.imf.org/en/Publications/fandd/issues/2021/09/> (accessed Jan. 15, 2024).

<sup>10</sup> Staff Final Comments Second Errata at 37

**AWEC Recommends that Avista Accelerate Its Transportation Energy Efficiency Program.**

In Opening Comments, AWEC noted that it supported Avista’s efforts and its collaboration with parties to establish transportation energy efficiency programs. In Action Items 2 – 4, Avista proposed to continue its status quo programs with the Energy Trust of Oregon (“ETO”), and to begin a stakeholder process surrounding transportation customer energy efficiency. Staff generally supported AWEC’s recommendation stating that it “supports the Company’s efforts to expedite the launch and growth of efficiency offerings for interruptible and transport customers.”<sup>11</sup> Regardless of the status of the CPP, AWEC believes that transportation energy efficiency is an important program that advances Oregon greenhouse gas policies. Accordingly, AWEC continues to recommend stakeholder engagement regarding the design of an effective transportation energy efficiency program.

**Conclusion.**

AWEC appreciates the opportunity to provide these comments and looks forward to future participation in this docket.

Dated this 16<sup>th</sup> day of January 2024.

Respectfully submitted,



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<sup>11</sup> *Id.* at 54.