

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

AVISTA CORPORATION REPORT  
CONCERNING ITS TEN-YEAR  
CONSERVATION POTENTIAL AND  
BIENNIAL CONSERVATION TARGET

DOCKET NO. UE-100176

**COMMENTS OF PUBLIC COUNSEL**

**March 5, 2010**

**I. INTRODUCTION**

1. Pursuant to the Commission's February 2, 2010, Notice of Opportunity to File Written Comments (Notice), the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments in advance of the Commission's March 11, 2010, Open Meeting. These comments address Avista's compliance report concerning its ten-year conservation potential and its biennial conservation target filed with the Commission in compliance with RCW 19.285.040 and WAC 480-109-010 (hereafter "Compliance Report").
2. Public Counsel has supported utility conservation programs. These programs deliver an important least-cost resource, and consumers have come to expect that their utility will offer such programs. Public Counsel has been engaged in the review of DSM tariff rider filings and other related conservation filings in part because the cost of such programs is borne by ratepayers. In some cases the costs for these programs has increased substantially in recent years, and in addition, utilities have also sought special ratemaking mechanisms related to their conservation efforts. In this context, it has become increasingly important for the Commission

and stakeholders such as Public Counsel to have confidence that utility conservation programs are cost-effective and well-designed.

3. Given the length and scope of information included in Avista’s Compliance Report, including all attachments, and the important policy implications that may derive from these, Public Counsel does not attempt to address and provide comment on every aspect of this filing. Our comments, instead, serve to highlight what we see as key concerns that deserve further review by the Commission, as well as to provide our assessment of the Company’s compliance with regard to the public involvement process in developing its ten-year achievable conservation potential and biennial conservation target. We will also address issues relating to what measures should be included and counted as part of the company’s acquisition or achievement in meeting the biennial target and ten-year potential.

4. As discussed below, Public Counsel does not recommend approval at this time but instead recommends that the Commission allow for additional process for further review of this filing, as contemplated by WAC 480-109-010 (4)(b).

## **II. TEN-YEAR AND BIENNIAL CONSERVATION TARGETS**

### **A. Basis for Targets.**

5. Consistent with the Energy Independence Act, the Commission rules state that in determining its ten-year conservation potential, a utility shall consider conservation resources that are “cost-effective, reliable and feasible.”<sup>1</sup> With respect to the biennial conservation target, the utility “must identify all achievable conservation opportunities,”<sup>2</sup> and the target “must be no lower than a pro-rata share of the utility’s cumulative ten-year achievable conservation

potential.”<sup>3</sup> In establishing electric energy efficiency acquisition targets, WAC 480-109-010(1) provides that a utility must derive these from either the utility’s most recent IRP or the utility’s proportionate share of the Northwest Power and Conservation Council’s (hereafter “Council”) current regional power plan targets for the state of Washington.

6. In establishing its targets for this filing, Avista has chosen to rely on its share of the Council targets rather than its IRP. It appears that Avista’s IRP methodology for determining conservation estimates may not be consistent with the Council’s methodology, and that this has informed the company’s decision to use the Council’s methodology for determining conservation acquisition targets. While it may be appropriate for Avista to use the Council’s Sixth Power Plan to determine their conservation acquisition targets, we do raise the concern that Avista may not be using a best practices approach in determining their conservation estimates through the IRP process, in light of the deviation of their methodology from the Council’s approach.

7. As noted, Avista elected to use the Council’s Sixth Power Plan<sup>4</sup> to establish the Company’s conservation targets. Avista states that while they have historically used their IRP conservation targets, the Company chose to use its share of the Council’s targets for the 2010-2011 biennium due in part to the difficulty in estimating savings from site-specific measures.<sup>5</sup>

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<sup>1</sup> WAC 480-108-010 (1)(a).

<sup>2</sup> *Id.* at (2)(a).

<sup>3</sup> *Id.* at (2)(b).

<sup>4</sup> RCW 19.285 states that the most recent Council Power Plan is to be used in setting targets. We note that Avista has used the proposed Sixth Power Plan as they anticipate the DSM targets contained in the Sixth Power Plan to be adopted in the near future. *See* footnote 3, p. 8 of Avista Utilities report concerning its ten-year acquisition potential and its biennial conservation target, Docket UE-100176, hereafter “Compliance Report of Avista.”

<sup>5</sup> Compliance Report of Avista ,p. 9.

The rule provides that if a utility chooses to use its IRP to develop its conservation acquisition targets, it must be consistent with the Council’s power plan methodology.<sup>6</sup>

8. Avista states that a significant amount of its acquisition stems from what the company terms “site-specific” measures<sup>7</sup> “that are extremely unique and therefore not amenable to generic analysis or from measures that could be reasonably anticipated during the IRP process.” Avista states that they determine their conservation acquisition estimate for site-specific programs primarily based upon historical acquisition, with modifications for customer load growth, price elasticity, and other events that may affect this estimate.<sup>8</sup>

9. Given that site-specific measures constitute a large portion of Avista’s acquisition, and appears to represent a primary reason for Avista’s departure from the Council’s methodology, Avista may want to consider revamping its IRP conservation potential analysis. Avista also appears to corroborate the need to better match their IRP methodology to the Council’s, stating “...better alignment of the Company’s IRP with the Council’s planning for future power plans would increase the quantification of each.”<sup>9</sup> The Council itself encourages use of IRP conservation goals as more meaningful and appropriate because they can better account for local conditions.<sup>10</sup>

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<sup>6</sup> WAC 480-109-101(1)(b)(i).

<sup>7</sup> Avista explains their site-specific program in the following manner: “Site-specific programs provide cash incentives to commercial and industrial customers for any cost-effective energy-savings measure with a simple payback greater than one year. These site-specific programs require customized services for commercial and industrial customers because many applications need to be tailored to the unique characteristics of customers’ premises and processes.” Compliance Report of Avista, p. 5.

<sup>8</sup> Compliance Report of Avista, p. 9.

<sup>9</sup> Compliance Report of Avista pp.18-19.

<sup>10</sup> See Fifth Plan Calculator and Sixth Plan Calculator, available at: <http://www.nwcouncil.org/energy/powerplan/6/supplycurves/I937/default.htm>

10. Finally, Public Counsel notes that in developing their biennial targets, each utility “must fully document how it prorated its ten-year cumulative conservation to determine the minimum level for its biennial conservation target.”<sup>11</sup> This description and documentation appears to be missing from Avista’s Compliance Report.

**B. Comparison to IRP Target and Past Actual Conservation Achievements.**

11. This section addresses three topics. First, concerns about Avista’s proposal to augment the Council’s Sixth Plan target to include savings from electric-to-gas fuel conversion are discussed. Second, Avista’s proposed biennial conservation target is compared to its purportedly lower IRP targets, which to date have been the basis for the Company’s budget projections used to establish the appropriate electric DSM tariff rider levels charged to ratepayers. Third, as a “reality check,” Avista’s proposed biennial target is compared to the Company’s recent conservation performance, using the most recent period for which data is available.

**1. Avista’s Proposal to Include Fuel Conversion Savings in its Targets**

12. Avista’s biennial conservation target based strictly on the Council’s Sixth Power Plan is 125,982 MWhs and their ten-year acquisition potential is 857,875 MWhs.<sup>12</sup> The Council’s methodology does not include fuel conversions. Avista, however, proposes to augment the targets mentioned above to include its estimated fuel conversion savings, adding 2,621 MWh to the biennial target and 15,428 MWh to the ten-year conservation potential to reflect savings from to electric-to-natural gas conversions. This results in a proposed biennial target of 128,603 MWhs and a proposed ten-year potential of 873,302 MWhs.

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<sup>11</sup> WAC 480-109-010(2)(b).

<sup>12</sup> Compliance Report of Avista, p. 11. See Chart data labeled “NWPPCC Option 1.”

13. By deviating from the Council’s methodology, Avista appears to not be consistent with statutory requirements, which state that in establishing their ten-year conservation potential and biennial target, utilities must use “methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan...”<sup>13</sup>
14. In the event savings from fuel conversion are included in Avista’s targets, we recommend the Commission consider how to appropriately track electric savings, as well as the resulting increased natural gas consumption. If fuel conversion is to be considered as a conservation program for I-937 compliance purposes, it may also be appropriate to reflect the increased natural gas consumption in Avista’s calculation of gas conservation savings.
15. Public Counsel has not yet had an opportunity to examine Avista’s estimates for fuel conversion, due to the limited public involvement process, as described below, in the development of Avista’s proposed conservation targets.

**2. Avista’s Proposed Biennial Target Compared to the IRP Target**

16. Avista represents that their proposed targets are “greater than the Company’s Integrated Resource Plan’s energy efficiency targets for the same period.”<sup>14</sup> This statement is hard to verify. If true, it raises several policy concerns, as discussed below. The conservation acquisition target for 2010-2011 developed in Avista’s most recent IRP is 133,913 MWh for Avista’s local energy efficiency programs, but this amount includes conservation acquisition for Washington and Idaho, and notably, this amount *excludes* savings associated with NEEA’s

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<sup>13</sup> RCW 19.285.040 (1)(a) regarding the ten-year potential and (b) regarding the biennial target.

<sup>14</sup> Compliance Report of Avista, p. 2 (emphasis in original).

regional efforts.<sup>15</sup> Avista's recent electric IRP shows total potential savings, including NEEA, of 10.4 aMW for 2010 and 10.7 aMW for 2011, for a total of 21.1 aMW for the 2010-2011 period. That amount translates into a target of approximately 184,836 MWh for Washington and Idaho, if NEEA savings are included.<sup>16</sup>

17. As mentioned above, Avista's IRP conservation targets include savings for Washington and Idaho. Therefore, in order to compare Avista's proposed I-937 biennial target to the IRP target, it is necessary to identify a Washington share of the IRP conservation target. Avista's Compliance Report does not explain the methodology the Company employed in order to identify a Washington-only share of the IRP target. The specific figures and calculations that Avista presumably performed, in order to reach the conclusion that the Sixth Plan targets exceed the IRP targets, are not provided in Avista's Compliance Report. Avista's Compliance Report includes a bar graph entitled, "Avista I-937 Compliance Options by I-937 Compliance Period," which compares the NWPCC compliance options to Avista's IRP targets by period. Presumably, the "Avista IRP" amounts shown in this bar graph reflect only a Washington share of the IRP targets. For the 2010-2011 period, the amount shown as the "Avista IRP" target appears to be approximately 110,000 to 115,000 MWh, but there is no explanation as to how this amount was derived.<sup>17</sup>

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<sup>15</sup> Avista Corp, 2009 Electric IRP, Chapter 3 – Energy Efficiency, p. 3-10. Avista's local energy efficiency programs include limited income, residential, prescriptive non-residential, and site-specific non-residential. *Id.*

<sup>16</sup> 21.1 aMW \* 8760 hours = 184,836 MWh. Avista states in their Compliance Report that they would like to include NEEA savings as a qualifying measure toward their biennial target, as discussed below. Compliance Report of Avista, p. 14.

<sup>17</sup> Compliance Report of Avista, p. 10 (the graph does not identify specific amounts, except for the option selected by Avista as its proposed target). If the Washington share of Avista's IRP target is 115,000 MWh, that represents 62% of the total target of 184,836 MWh. However, according to Avista's most recent Triple E reports, Washington has represented 68% of the electric savings attributed to electric programs for the 2007-2008 period. Avista's 2007 and 2008 Triple E Reports, Tables 5E.

18. In summary, Public Counsel has not been able to confirm Avista's assertion that their proposed conservation targets exceed their IRP targets. While Public Counsel does not necessarily oppose the Company pursuing a higher conservation target than that developed in their IRP process, in the event that their proposed target is higher, this does bring up a number of important policy questions. For example, the Company forecasts their annual DSM budget based on the targets established through the IRP process.<sup>18</sup> If targets exceed those developed in the IRP process, the natural conclusion is that the Company will likely exceed their budget.

19. Avista currently carries a significant negative balance in their Washington electric DSM tariff rider, which then may be exacerbated by the increased targets and program activity which are not reflected in their current DSM budget.<sup>19</sup> While Avista recently requested an increase to their natural gas DSM tariff rider, the Company has not requested an increase to their electric DSM tariff rider. In addition, the cost-effectiveness projections for 2010 shown in Attachment B to Avista's filing reflect estimated savings, expenditures, and benefits based upon the IRP target. To the extent the biennial target for I-937 is significantly higher than the IRP target, the cost-effectiveness analysis associated with achievement of the higher I-937 target may look quite different.

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<sup>18</sup> See Compliance Report of Avista, p. 6 "Avista has used the results of its IRP process to establish a budget for conservation measures..." *Id.*

<sup>19</sup> Avista's February 12, 2010 cover letter accompanying its filing in Docket UG-100254 to increase its Schedule 191 gas DSM tariff rider, states that as of the end of January 2010, Avista's electric DSM tariff rider balance for Washington was a negative \$3.2M. Avista also has a significant negative balance on their Washington gas DSM tariff rider. *Id.*



### 3. Comparison of Avista's Proposed Biennial Target to Recent Performance

20. Public Counsel attempted to compare Avista's proposed biennial target to their recent performance over a two-year reporting period, in order to assess whether the proposed target reflected a higher or lower level of conservation acquisition. For Avista, the most recent two-year period for which data is available is 2007-2008.<sup>20</sup> However, comparing Avista's proposed target to their recent performance is difficult, due to methodological differences in calculating savings, as discussed below.

21. According to Avista's Annual Triple E reports for 2007-2008, Avista's Washington electric savings from electric DSM programs totaled 87,707 MWh.<sup>21</sup> Public Counsel's understanding is that these savings amounts do not include any savings associated with NEEA's regional market transformation efforts.<sup>22</sup> In addition, Avista's 2007 and 2008 savings data uses their "de-rated" methodology, which counts a portion of savings for projects that have not yet been completed.<sup>23</sup>

22. Avista's proposed biennial target of 128,603 MWhs represents an increase of 46% from the 2007-2008 electric savings discussed above. While it may not be appropriate to compare these figures, due to different savings calculations methodologies (e.g. whether NEEA savings are included, de-rated savings), an increase of this magnitude would suggest that Avista's electric DSM expenditures could increase significantly.

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<sup>20</sup> Avista has informed the Triple E that their 2009 Annual Report should be complete by March 31, 2010.

<sup>21</sup> Avista's 2007 and 2008 Annual Triple E Reports, Tables 5E.

<sup>22</sup> Avista 2008 Annual Triple E Report, Table 15 EG, note 2.

<sup>23</sup> See Avista's 2007 Annual Triple E Report, Appendix A, for a description of Avista's de-rated methodology.

23. Interestingly, Avista's IRP target for 2010-2011 appears to represent a more modest increase compared to 2007-2008 performance. Since the IRP target includes Washington and Idaho, it must be compared to electric savings achievement in both states for 2007-2008. Avista's IRP target for local Avista programs is 133,913 MWh (regional efforts such as NEEA are excluded).<sup>24</sup> Avista's Triple E Reports show combined Washington and Idaho electric savings attributable to electric DSM programs of 128,556 MWh.<sup>25</sup> Therefore, Avista's IRP target for 2010-2011 appears to represent a 4% increase from their electric conservation savings acquisition in 2007-2008. If Avista's 2009 electric DSM savings performance is similar to 2008 performance, which was 74,861 MWh, then the IRP target for 2010-2011 would actually be *lower* than the company's recent performance.<sup>26</sup> Again, Public Counsel's understanding is that these figures include savings from Avista's local programs only, and exclude any savings associated with NEEA's regional market transformation efforts.<sup>27</sup>

**C. Public Involvement.**

24. WAC 480-109-010(3)(a) states in part that "participation by Commission Staff and the public in the development of the ten-year conservation potential and the two-year conservation target is essential." The rule also requires that the utility's report must outline "the extent of public and commission staff participation in the development of these conservation metrics."<sup>28</sup>

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<sup>24</sup> Avista's 2009 Electric IRP, Chapter 3 – Energy Efficiency, p. 3-10. Avista's local programs includes the company's limited income, residential, commercial and industrial DSM programs. *Id.*

<sup>25</sup> Avista's 2007 and 2008 Annual Triple E Reports, Tables 5E.

<sup>26</sup> Avista's 2008 Annual Triple E Report, January 1, 2008 – December 31, 2008, Table 5E. 2008 savings include what Avista terms "de-rated" savings. *See infra.*

<sup>27</sup> The savings figures provided in this paragraph also exclude savings associated with distribution efficiencies.

<sup>28</sup> WAC 480-109-010(3)(a).

25. Avista provided three main opportunities, beginning in September of 2009, for public participation in the Company's I-937 planning process and target setting. These forums included a presentation at the September 30, 2009, Triple E Meeting, the distribution of a draft "summary outline" of a draft compliance filing on November 11, 2009, and a conference call to discuss comments on the draft filing in December, 2009. The Company made an informal filing of their ten-year and biennial conservation targets on December 31, 2009.<sup>29</sup>

26. Public Counsel attended the Company's September 30, 2009, Triple E Meeting and also submitted comments to the Company on their draft compliance filing which highlighted initial concerns and questions. These written comments were discussed and addressed on a conference call in December, 2009. Public Counsel's concerns were focused on the proposed conservation acquisition sources to be included in the Company's targets as well as statements that Public Counsel believed to be outside of the scope of the Company's conservation compliance report. While the Company was responsive in making some changes to address some of Public Counsel's concerns, other concerns remain.

27. With respect to the development of the ten-year and biennial targets themselves, the Company did not (outside of a table with rough estimates included in their draft report) provide in writing the specific ten-year or biennial acquisition targets until the December 31, 2009 informal filing with the Commission. Consequently, Commission Staff, Public Counsel, and other interested parties did not have a meaningful opportunity to engage in the development of the proposed targets. For example, Avista's draft "summary outline" provided November 11,

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<sup>29</sup> Documents related to these activities were included as Attachment A to Avista's Compliance Report.

2009, did not discuss the issue of augmenting the Council's targets to include fuel conversion.<sup>30</sup>

In the future, to ensure the public has the ability provide input on targets themselves, and to allow for a clear understanding as to the basis of the Company's proposed targets, we believe the Company should provide these further in advance of the filing deadline.

### **III. QUALIFYING CONSERVATION MEASURES INCLUDED IN MEETING CONSERVATION TARGETS**

28. Two years from now, Avista and the other electric utilities will be filing reports regarding their compliance with their biennial targets, pursuant to WAC 480-109-050(4). At some point, no later than the review of compliance with the biennial targets, the Commission will have to determine which measures, and their associated savings, are properly included as qualifying toward the target. This section discusses "qualifying measures" issues raised in Avista's Compliance Report.

#### **A. Qualifying Measures.**

29. Avista states that acquisition from all conservation measures qualifying under the Northwest Power Act will qualify toward meeting the conservation target: "This includes measures that may not have been identified during the prior Power Plan due to insufficient information or analysis, and measures that were evaluated and may not have been cost-effective at the time they were evaluated for the Power Plan."<sup>31</sup> Public Counsel is not clear as to what is meant by the reference to a "prior Power Plan," but given that Avista has stated that they used the Sixth Power Plan in developing its conservation acquisition targets, which is the most recent power plan, the Company should have been able to determine whether the measures in question

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<sup>30</sup> Compliance Report of Avista, Attachment A, pp. 72-77.

were identified in the Sixth plan and whether they were cost-effective. If any measures were not identified in the Sixth Power Plan, or were not found to be cost-effective, it would not appear to be appropriate for Avista to include such measures as a qualifying measure for I-937 compliance. A more detailed description of Avista's proposal, and further clarification as to what possible measures might be included in this category, is lacking.

30. Without adequate support, Avista's Compliance Report appears to assert that savings from the programs and efforts described below should be counted toward their ten-year and two-year conservation targets:

- electric to natural gas conversions
- quantifiable behavioral efficiencies
- distribution system efficiencies on both the customer and utility side of the meter
- quantifiable adoption of efficiency measures contained within the scope of the Sixth power plan that are beyond utility program intervention
- Avista's share of acquisition achieved by the Northwest Energy Efficiency Alliance (NEEA).
- Efficiency measures from ARRA-supported projects.<sup>32</sup>

31. With respect to these measures, Avista provides very little explanation to support the claim that these should be considered qualifying measures, for I-937 compliance. Because it remains unclear whether these items should be included, it is premature to automatically treat them as qualifying measures.

32. To the extent possible, there should be congruence between the measures used to generate and develop the biennial target, and the measures considered as qualifying toward performance in meeting the target. That is, the measures and associated savings that are included and counted as part of the company's savings acquisition or performance (i.e. the numerator, in

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<sup>31</sup> Compliance Report of Avista, p.13.

evaluating performance in comparison to the target), should also be included in the establishment of the target and potential (i.e. the denominator). In this regard, we do not believe the Council's Sixth Plan includes any behavioral measures, and therefore Avista's proposed biennial target and ten-year potential would not include any estimated savings from such programs. Similarly, Public Counsel is not certain whether the Sixth Plan includes any savings related to NEEA's efforts.

33. In written comments provided to the Avista on their draft summary outline, Public Counsel expressed concern that the question of whether savings from behavioral measures or programs can be quantified is controversial at this time, and that it was premature for Avista to plan to claim savings for behavioral measures. The Company's response was that savings from certain behavioral programs can be easily quantified, while others may be more difficult and they would only report savings for programs the Company deems "quantifiable."<sup>33</sup> Avista does not provide any further description in their Compliance Report regarding what such hypothetical "behavioral programs" might look like in terms of program design, or the process by which such efforts would be measured and evaluated to determine possible "quantifiable."

34. The Company refers to the "quantifiable adoption of efficiency measures contained within the scope of the 6<sup>th</sup> Plan that are beyond utility program intervention" as a qualifying acquisition source, but fails to provide sufficient support. In a footnote, Avista explains that this refers to the documented installation of cost-effective electric-efficiency measures, but fails to explain who documents the installation of these measures and what type of measures are

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<sup>32</sup> Compliance Report of Avista, pp. 11-15.

<sup>33</sup> December 16, 2009 conference call with Avista and interested parties.

included in this category.<sup>34</sup> Public Counsel does not have a clear understanding of what the Company is referring to in this category of possible savings acquisition.

35. In addition, Avista provides only a minimal description regarding how the company's share of acquisition resulting from investment and involvement with NEEA is calculated, and why these savings should qualify toward the conservation acquisition targets.<sup>35</sup> As stated previously, Public Counsel is not certain whether NEEA savings are reflected in the Council's Sixth Plan calculations.

36. Avista proposes to include "all distribution efficiency programs which are implemented to replace existing infrastructure will qualify toward meeting the conservation target."<sup>36</sup> Public Counsel is not clear as to whether some of these activities might be performed as part of the operation of a prudent utility, and therefore perhaps should not necessarily be considered as conservation.

37. With respect to efficiency efforts supported by ARRA funds, which Avista proposes to include as a qualifying measure, Public Counsel has not had an opportunity to examine these ARRA programs. Again, Avista's Compliance Report does not provide an explanation of these programs or any explanation supporting inclusion of these savings toward the conservation acquisition targets. Avista's draft summary outline provided on November 11, 2009 did not appear to include a discussion of this issue.

38. Lastly, Avista's stated "intent to treat the acquisition target in the 2<sup>nd</sup> (2012-2013) compliance period and beyond as a cumulative target," does not appear to be fully consistent

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<sup>34</sup> See Compliance Report of Avista, page 12.

<sup>35</sup> See Compliance Report of Avista, page 14.

<sup>36</sup> Compliance Report of Avista, p. 19.

with the statutory requirements of RCW 19.285.<sup>37</sup> The effect of Avista’s proposal would appear to allow for “rollover,” for example, of conservation acquisition in excess of the 2010-2011 period biennial target, toward the 2012-2013 biennial target. This was not expressly permitted by the statute, and appears contrary to the legislative intent, as it substantially alters the meaning of two-year biennial targets.

39. The issues we describe in this section pertain to the measures and savings the utility is permitted to include, in calculating whether or not they have met their biennial target and ten-year potential. We recognize that some of these issues may or may not become resolved as part of the Commission’s review of the proposed conservation targets, but instead may be considered as part of a future review of the Company’s performance. Nevertheless, we did believe it important to highlight some of these issues, as they are referenced in the materials submitted by Avista with little, if any, supporting explanation, and raise broader policy implications.

**B. Savings Estimates.**

40. Historically, the Commission has not explicitly approved the savings estimates employed by the electric or natural gas utilities to document and measure conservation performance. These savings estimates form the building blocks of the utility’s calculation of its conservation achievement over a given period, and are therefore a critical piece of the puzzle in determining the performance of the utility in its conservation achievement. Public Counsel’s understanding, however, is that these savings estimates are not reported to the Commission. While the utilities have non-binding advisory groups regarding conservation – such as Avista’s Triple-E – Public

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<sup>37</sup> Compliance Report of Avista, p. 12.



Counsel's experience is that in general there has been little time devoted to discussion of these savings estimates at the utility conservation advisory group meetings.

41. Consequently, the Commission, Staff, Public Counsel, and other stakeholders have not had the opportunity to develop a clear understanding of the basis and underlying assumptions of the specific savings estimates employed by the utilities. While the Council's Regional Technical Forum (RTF) provides guidance to utilities on such matters, the investor owned utilities are not required to comply with the RTF's guidance. Neither Avista, PSE, nor Pacificorp have demonstrated or addressed whether they employ electric DSM savings estimates that are consistent with the guidance and recommendations of the RTF. In addition, in the event a utility makes changes to its savings estimates, there does not appear to be any requirement that the utility inform the Commission and/or its conservation advisory group of any such changes. With respect to Avista, Public Counsel understands that the Company did make some changes to its electric conservation estimates in the past two years, but we have not had an opportunity to examine the basis for those changes, or their impact on Avista's reported electric conservation achievement.

42. Avista's Compliance Report proposes to reflect measure conservation acquisition based upon the energy codes and federal standards in place at the beginning of the biennial compliance period, even if such codes and standards change during the two-year period.<sup>38</sup> This is another example of an issue in which further clarification is needed to understand the impact of the Company's proposal.

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<sup>38</sup> Compliance Report of Avista, p. 13.

#### **IV. OTHER RECOMMENDATIONS AND CONCERNS**

##### **A. Overall Public Counsel Recommendation.**

43. At this time, Public Counsel believes it is premature to take a position regarding approval of Avista's proposed ten-year conservation potential and biennial target, due to the outstanding questions and issues addressed in these comments. We recommend that at a minimum, the Commission should reserve its decision until after an additional round of written and oral comments. This is appropriate for several reasons. First, this would allow all parties sufficient time to review all written comments, as well as any oral comments on March 11, 2010, and to prepare a response and final recommendation. Second, since this represents the Company's initial compliance filing pursuant to RCW 19.285.040, we believe the Commission and interested parties will benefit from additional review and further opportunities for comment on this new and significant area. After this further round of comment and recommendations, the Commission can then determine whether to approve a filing, or whether review is needed for individual companies.

44. If the Commission determines that additional process is necessary, for Avista or any of the electric utilities, Public Counsel recommends the Commission invoke the discovery rule, in order to facilitate information exchange among interested parties.

##### **B. Effect of Commission Approval of Conservation Targets**

45. Public Counsel recommends that the Commission provide clear guidance in this docket regarding the specific scope of the Commission's "approval" of a utility's conservation targets. It would be helpful to parties to have understand the scope as they prepare further comments and recommendations. For example, in the event the Commission approves Avista's ten-year

conservation potential and biennial target, either with or without conditions, does that approval apply to:

- a. The specific megawatt hours identified as the biennial target and ten-year potential;
- b. The 20-page Compliance Report filed January 29, 2010, and all statements made therein; or,
- c. The Compliance Report filed January 29, 2010 and all attachments to the filing, including all statements made therein.

46. Public Counsel recommends that any approval be limited narrowly to item (a) only, that is, to the numerical MWh target. The Commission should not prejudge the prudence of any of the underlying energy efficiency activities at this time. That issue should be reserved for proceedings where prudence issues for DSM programs are currently determined. The Energy Independence Act also specifically provides that the Commission may examine the cost-effectiveness of utility conservation programs.<sup>39</sup> The approval of these targets should not preclude the Commission from reviewing that issue at a later time. Public Counsel further notes that the WAC provisions implementing the Energy Independence Act permit prudence to be raised in the event a utility seeks to recover in rates penalty amounts incurred for failure to meet the target.<sup>40</sup>

47. In the event the Commission's "approval" is considered to apply to all attachments included with the Compliance Report, Public Counsel believes that a lengthy review process would be required for Avista. For example, Avista's Attachment B to their Compliance Report is a 207-page document, the 2010 DSM Business Plan, contains numerous projections and policy

decisions, some of which are not yet finalized. Moreover, Avista has recently provided information to Public Counsel in a separate proceeding now before the Commission, which suggests that the version of the document provided as Attachment B to the January 29, 2010 Compliance Report is a draft version of the 2010 Business Plan.<sup>41</sup>

48. The draft EM&V plan included in Attachment A to Avista's Compliance Report, is another example of a draft document that is likely to change. The Commission's Order in Avista's recent rate case highlights the importance of the Company pursuing more robust EM&V and specifically ordered the Company to initiate a Collaborative to review EM&V issues and ultimately provide an EM&V plan to the Commission as a compliance filing, by September 1, 2010.<sup>42</sup> The Commission's directive was made in connection with Avista's request to extend their natural gas decoupling mechanism. Public Counsel understands that Avista intends for this Collaborative to address both gas and electric EM&V issues. While a draft EM&V report is included within Attachment A to Avista's Compliance Report, given Avista's intention to have this Collaborative address both electric and gas DSM savings measurement and verification, the final plan developed by this Collaborative may be quite different from the Company's current

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<sup>39</sup> RCW 19.285.040(1)(d).

<sup>40</sup> WAC 480-109-105(4).

<sup>41</sup> Avista's workpapers in UG-100254, to increase the Schedule 191 Gas DSM tariff rider, showed an estimated Washington budget of \$4.79M, which is about 8% lower than the \$5.2M shown in the 2010 Business Plan provided in Attachment B. Avista's explanation to Public Counsel regarding this apparent inconsistency stated in part: "At the time the January 29, 2010 filing was being prepared, the 2010 Business Plan was still in a draft phase."

<sup>42</sup> See Docket UE-090134 and UG-090135, Order 10, ¶ 305. "Furthermore, we agree with the parties that Company's EM&V efforts need to be improved. We require the parties to join in the collaborative planned for this subject, and expect them to participate in the development of consistent and accurate methods to judge the effectiveness of all energy efficiency programs and measures. We also require the Company to file an EM&V plan for its DSM programs by September 1, 2010. The plan should include a bill verification analysis that examines changes in customer usage as a result of DSM programs." *Id.*

draft provided in its Compliance Report. The initial meeting is scheduled for March 10, 2010.

**C. Need for Generic Proceeding Regarding Utility Conservation Programs and I-937 Requirements.**

49. Public Counsel recommends the Commission consider a rulemaking proceeding, or other appropriate process, to address at least two topics: the savings estimates used to calculate conservation acquisition, and the development of consistent DSM reporting requirements for all utilities.

50. As discussed above, Public Counsel believes it is important for the Commission to have a clear understanding of the savings estimates used by the electric utilities in measuring their conservation achievement. The Commission and stakeholders should have confidence that the savings estimates used by the utilities contribute to an accurate and reliable calculation of conservation savings acquisition. Therefore, we recommend these issues also be considered as part of a rulemaking or other process to allow for a thorough review of the savings estimates used by the electric utilities to comply with the requirements of RCW 19.285 and WAC 480-109, and to consider what if any procedures or requirements should be put in place regarding the basis and development of those savings estimates, consideration of any changes to those estimates, and related issues.

51. In addition, consistent reporting requirements would greatly assist the Commission and interested stakeholders in reviewing utility projections, performance levels, expenditures, and cost-effectiveness results. Such a process could address reporting of the following information, for example:

- Projected budget, participation, and savings levels by program;
- Actual expenditures, participation, and savings levels by program;
- Cost-effectiveness methodology and analysis;
- Total savings achieved compared with targets;
- Incentives provided, by program and/or measure;
- Savings estimates, by program and/or measure;
- Narrative explanation of savings estimates, and workpapers;
- Evaluation, Measurement, and Verification (EM&V) of Savings;
- NEEA expenditures and savings calculations

52. The frequency of utility reporting on these matters should also be addressed. It may be most helpful for utilities to report on some or all of these issues every six months. Currently, for example, both PSE and PacifiCorp file semi-annual and annual reports regarding their DSM programs.<sup>43</sup> While Avista prepares annual reports to their Triple E advisory group, Public Counsel's understanding is that historically those reports have not been filed with the Commission on a regular basis.

If the Commission agrees that such a rulemaking or other proceeding is warranted to address these and possibly other related matters, it should consider employing the assistance of a Facilitator, an individual with expertise on this technical subject matter who would help facilitate the proceeding.<sup>44</sup> This individual might also develop preliminary recommendation to the Commission. Commission Staff and interested parties would be provided an opportunity to provide written comments regarding the recommendations of the Facilitator. The importance

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<sup>43</sup> For example, PSE's semi-annual and annual Energy Efficiency Services reports are filed in Docket. No. UE-970686.

<sup>44</sup> In conjunction with other Qwest state commissions, the Commission utilized a Facilitator in the review of Qwest's proposed multi-state Qwest Performance Assurance Plan (QPAP) as part of Qwest's 271 proceeding. The Facilitator provided a recommended QPAP to the participating state commissions, and the WUTC provided an opportunity for interested stakeholders to submit comments regarding the Special Master's recommendations, and the Commission ultimately modified certain components of the QPAP. UT-003022 & UT-003040, Thirtieth Supplemental Order Addressing Qwest's Performance Assurance Plan. In the one of the telecommunications Generic Cost and Pricing dockets, the Commission retained a special advisor to assist the Commission.

and the complexity of the issues surrounding I-937 implementation warrant consideration of devoting resources to a special approach of this type.

**V. CONCLUSION**

53. Public Counsel appreciates the opportunity to comment on Avista's Compliance Report. We recognize that this first compliance period and filing which establishes Avista's ten-year conservation potential and biennial target for the 2010-2011 period is a learning process for all parties. We look forward to working with the Company, the Commission and stakeholders, in future proceedings and compliance periods to address these issues.