

Agenda Date: August 22, 2024
Item Number: D4

Docket: UG-210827
Company: Avista Corporation d/b/a Avista Utilities
Staff: Sofya Atitsogbe, Regulatory Analyst

Recommendation

Issue an order in Docket UG-210827, finding that Avista Corporation d/b/a Avista Utilities:

- (1) Has complied with the reporting requirements in Order 01¹ in Docket UG-210827;
- (2) Achieved 1,263,481 therms of its 2022-2023 biennial conservation target of 2,302,056 therms, a deficit of 1,038,575 therms;
- (3) Has not complied with the conservation target in Order 01² in Docket UG-210827 in accordance with RCW 80.28.380;
- (4) Is subject to penalties in the amount of \$2,002,077.91, pursuant to RCW 80.04.380;
- (5) Applied 0 therms to its 2022-2023 decoupling commitment of 109,622 therms, a deficit of 109,622 therms;
- (6) Has not complied with its conservation decoupling mechanism pursuant to Order 05 in consolidated Dockets UE-140188 and UG-140189; and
- (7) Is subject to penalties in the amount of \$75,000, pursuant to Order 09 in consolidated Dockets UE-190334, UG-190335, and UE-190222 for failure to meet its decoupling commitment.

Background

RCW 80.28.380, introduced in 2019, requires each gas utility to identify and acquire all available and cost-effective conservation measures, and to establish a conservation acquisition target every two years, beginning in 2022. 2022-2023 was the first biennium when gas companies had to comply with the statute.

On May 31, 2024, Avista Corporation d/b/a Avista Utilities (Avista or Company) filed with the Washington Utilities and Transportation Commission (Commission) its gas and electric 2022-

¹ In the Matter of Avista Corp. d/b/a Avista Utils. 2022-2023 Biennial Acquisition Target Under RCW 80.28.380, Docket UG-210827, Order 01 at 6, ¶ 23 (Jan 18, 2022).

² Id.

2023 Biennial Conservation Report,³ as well as gas and electric 2023 annual conservation reports (ACRs) in the same docket as its corresponding biennial conservation plan (BCP). On July 24, 2024, Commission Staff (Staff) filed responsive comments to the Company's biennial conservation report (BCR).⁴ The Commission acknowledged Avista's BCP and targets at the recessed Open Meeting on January 18, 2022.

Targets

Please refer to Table 1 for Avista's reported natural gas targets and savings. The Company achieved 1,263,481 therms of its 2022-2023 biennial conservation target of 2,302,056 therms (109,622 therms decoupling commitment plus 2,192,434 therms conservation target).

Commission Staff reviewed Avista's conservation reports for compliance with relevant rules and orders. While Staff ultimately recommends a penalty for Avista's failure to meet its conservation goals, it evaluated evidence in favor and against the imposition of fees.

Table 1: Avista's Natural Gas Targets and Savings (Therms)

A	Total Conservation Goal (B+C)	2,302,056
B	Conservation Target	2,192,434
C	Decoupling Penalty Threshold	109,622
D	Total Reported Savings	1,263,481
E	% of Conservation Target Achieved (D / B X 100%)	58%
F	% of Total Conservation Goal Achieved (D / A X 100%)	55%

Avista missed its biennial conservation target (row B in Table 1) by 928,953 therms, or 42 percent. One of the factors contributing to such a low achievement rate was the 2023 natural gas residential portfolio's realization rate,⁵ which amounted to about 65 percent. This rate means that out of each 100 therms of Avista's reported savings the evaluator only confirmed 65 therms. The verified realization rate for the Midstream program is 35 percent which dragged down the rate of

³ In the Matter of Avista Corp. d/b/a Avista Utils. 2022-2023 Biennial Acquisition Target Under RCW 80.28.380, Docket UG-210827, 2022-2023 Biennial Conservation Report at 5 (May 31, 2024) (Avista's BCR).

⁴ *In the Matter of Avista Corp. d/b/a Avista Utils. 2022-2023 Biennial Acquisition Target Under RCW 80.28.380*, Docket UG-210827, Commission Staff Comments Regarding Electric and Natural Gas Utility Conservation Achievements (July 24, 2024) (Staff's BCR Comments).

⁵ Realization rate is the ratio of measured savings to audit-predicted savings. *Realization Rates of the National Energy Audit*, Oak Ridge National Laboratory (March 30, 1998).

the whole residential portfolio.⁶ Staff interprets the report of the evaluator as follows: Avista's contractors used a wrong engineering algorithm that inflated the savings they reported to Avista. Ultimately, lack of due diligence led to the inflated expectation from Midstream and underperforming conservation portfolio.

Discussion

Basis for Fines for Failure to Meet Natural Gas Conservation Goals

Although there is still no equivalent of RCW 19.285.040(1)(e) for gas companies, Staff believes it reasonable to apply similar standards across companies and fuels because of the similarities in electric and gas conservation management. Staff looked for evidence of the following two items related to Avista's gas target: (1) circumstances that would allow the Company to be "considered in compliance" under RCW 19.285.040(1)(e); and (2) demonstration of adaptive management as discussed in WAC 480-109-100(1)(a)(iv) (namely, continuous review and updates to adapt to changing conditions and technologies):

- (1) Applicability of the extenuating circumstances in RCW 19.285.040(1)(e): Staff finds Avista did not provide enough evidence of extenuating circumstances that prevented it from accomplishing its goals.⁷
- (2) Adaptive management: Avista used several adaptive management strategies during this biennium, such as a Midstream program addition in 2023 as well as a Contractor Incentive program.

Despite the efforts noted above, Avista did not meet its gas savings target for the 2022-2023 biennium. This places Avista in violation of RCW 80.28.380 and the conditions of Order 01 of this docket.

This is a case of first impression for the penalties to apply against a gas utility for failure to meet conservation goals. RCW 80.28.380 establishes the requirement that gas utilities acquire all cost-

⁶ *In the Matter of Avista Corp. d/b/a Avista Utils. 2022-2023 Biennial Acquisition Target Under RCW 80.28.380*, Docket UG-210827, Avista's 2023 Annual Conservation Report, Appendix B: 2023 Natural Gas Impact Evaluation Report by ADM at 9 (May 31, 2024): "The Residential Portfolio impact evaluation resulted in a realization rate of 64.94% due to discrepancy in expected savings for the Midstream Program and due to differences between the implementer-assigned expected savings values using minimum code baseline and the RTF-implemented market practice baseline."

⁷ See *In the Matter of Avista Corp. d/b/a Avista Utils.' 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-210826, Recessed Open Meeting Memo for August 22, 2024 Recessed Open Meeting (Aug. 22, 2024).

effective conservation but does not provide language describing penalties for failing to meet the requirement.

RCW 80.04.380 provides general provisions for fines for public service companies that fail to meet the requirements of an order, or provision of Title 80. However, RCW 80.04.380 characterizes the fine as “Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day’s continuance thereof shall be and be deemed to be a separate and distinct offense.” The language is ambiguous as to how “a violation” applies to a missed target.

Staff provides various interpretations for Commission’s consideration.

1. Failure to meet conservation goals equals one violation, resulting in a single \$1,000 fine.

This fine would be too small and signals that failure to meet conservation goals is inconsequential.

2. Each therm by which the gas company failed to meet its goal constitutes a single violation and \$1,000 fine. Calculation: Avista failed to meet its goal by 928,953 therms, which would equate to a fine of \$928,953,000.

This fine would be too large.

3. Failure to meet the goal constitutes a daily failure to meet the conservation goal for the biennium: $\$1000/\text{day} \times 365 \text{ days/year} \times 2 \text{ years} = \$730,000$.

This fine does not scale for the size of each utility. Each utility, regardless of its conservation goals, would face the same scale of penalties. A 20 percent failure for a small utility would bear the same fine as a 20 percent failure for a large utility.

4. Failure to meet the goal constitutes a daily failure but is scaled to the percentage the company failed to meet its goal. Calculation: Avista achieved 58 percent of its goal, so being fined daily for 42 percent of days of the biennium equates to $\$1000/\text{day} \times 365 \text{ days/year} \times 2 \text{ years} \times 42 \text{ percent} = \$306,600$.

Same issue as in 3.

5. The fine is equal to the avoided cost⁸ times the therms by which the Company missed its conservation goal. Calculation: Avista missed its residential goal by 338,059 therms, commercial/industrial goal by 720,827 therms.⁹ For residential, avoided cost equals \$1.22/therm, for industrial \$0.55/therm, for commercial \$2.29/therm.¹⁰ In its BCP, Avista differentiates between commercial and industrial sectors. However, in the BCR both sectors are part of commercial/industrial sector. Through proportion based on the BCP,¹¹ Staff calculated that therm deficiency for industrial sector equals 35,085 therms and for commercial sector 685,742 therms. The final penalty is the sum of the products of avoided cost per sector times missed therms per sector. By multiplying \$1.22/therm by 338,059 therms (residential), \$0.55/therm by 35,085 therms (industrial), \$2.29/therm by 685,742 therms (commercial) and summing them up, the final penalties would equate to \$2,002,077.91.

This method of applying a penalty that is proportional to the avoided cost clearly ties the fine amount to the logic of avoided costs and the nature of public interest.

Staff believes that tying the penalty to avoided cost is the most appropriate penalty scheme because it connects the penalties to the statutory goals of RCW 80.28.380. Therefore, Staff recommends a penalty of \$2,002,077.91 for Avista's failure to meet its statutory gas target.

⁸ Avoided cost describes the incremental cost a utility did not incur for an additional output it did not produce.

⁹ In the Matter of Avista Corp. d/b/a Avista Utils. 2022-2023 Biennial Acquisition Target Under RCW 80.28.380, Docket UG-210827, 2022-2023 Biennial Conservation Plan at 3, Table 2 (Nov. 1, 2021); and In the Matter of Avista Corp. d/b/a Avista Utils. 2022-2023 Biennial Acquisition Target Under RCW 80.28.380, Docket UG-210827, 2023 Annual Conservation Report at 6, Table 6 (May 31, 2024). Staff calculated the missed therms by subtracting numbers reported in the annual conservation report from the numbers in biennial conservation plan. Residential: $1,274,949 - 936,890 = 338,059$ therms.

Commercial/industrial: $(872,828 + 44,657) - 196,658 = 720,827$ therms.

¹⁰ In the Matter of Avista Corp. d/b/a Avista Utils. 2023 Gas Integrated Resource Plan, Docket UG-220244, Plexos Data Files, DSM, DSM Cost per MMBtu – Expected, cells Q3 (WA_Com), R3(WA_Ind), S3(WA_Res) (May 2, 2023). 1 MMBtu equals 10 therms. To get avoided cost per therm, Staff divided the numbers provided in the cells by 10 and rounded them to the hundredth.

¹¹ In the Matter of Avista Corp. d/b/a Avista Utils. 2022-2023 Biennial Acquisition Target Under RCW 80.28.380, Docket UG-210827, 2022-2023 Biennial Conservation Plan at 3, Table 2 (Nov. 1, 2021). To calculate industrial and commercial missing therms, Staff calculated the sum of commercial and industrial conservation target:

$44,657 + 872,828 = 917,485$. Staff then calculated what portion of target each of the sectors comprises: $44,657 / 917,485 = 0.04867$ and $872,828 / 917,485 = 0.9513$. Staff then multiplied these proportions by the achieved therms $(58,819 + 137,839) \times 0.04867 = 35,085$ therms and $(58,819 + 137,839) \times 0.9513 = 685,742$ therms.

Basis for Penalty Under Decoupling Mechanism

Order 05 in Dockets UE-140188 and UG-140189 established Avista's 5 percent decoupling commitment for electric and gas conservation targets based on the Settlement. Order 09 in Dockets UE-190334, UG-190335, and UE-190222 further established tiers for gas decoupling penalties:¹²

- \$20,000 for meeting between 4.5 percent and 5.0 percent of its incremental gas conservation commitment,
- \$50,000 for meeting between 3.75 percent and 4.5 percent of its incremental commitment, and
- \$75,000 for less than 3.75 percent of its incremental commitment.

Avista's decoupling commitment deficiency is 109,622 therms which is less than 3.75 percent of its incremental commitment. The Company agreed to pay the penalty of \$75,000 in its 2022-2023 BCR.¹³ Staff did not find any penalty exemption provisions contained within Order 05 and Order 09, and the Company is therefore liable for not meeting its decoupling commitment.

Comments from Interested Parties

As of August 13, 2024, no interested party filed comments in this docket.

Conclusion

Staff found that Avista did not meet its natural gas conservation target and its natural gas decoupling commitment. Avista achieved 1,263,481 therms of its 2022-2023 biennial conservation target of 2,192,434 therms, a deficit of 928,953 therms and is not in compliance with the conservation target in Order 01 in Docket UG-210827. Staff found no exemption provisions under the relevant orders for failure to meet decoupling commitment. Staff therefore recommends that the Commission issue an order requiring the Company to pay penalties in the amount of \$2,002,077.91, pursuant to RCW 80.04.380, and in the amount of \$75,000 for failure to meet its natural gas decoupling commitment.

¹² *Wash. Utils. & Transp. Comm'n v. Avista Corp. d/b/a Avista Utils.*, Dockets UE-190334, UG-190335, and UE-190222, Order 09 at 34, ¶ 98 (March 25, 2020).

¹³ Avista's BCR at 6.