

Agenda Date: August 22, 2024
Item Number: D3

Docket: UE-210826
Company: Avista Corporation d/b/a Avista Utilities

Staff: Sofya Atitsogbe, Regulatory Analyst

Recommendation

Issue an order in Docket UE-210826, finding that Avista Corporation d/b/a Avista Utilities:

- (1) Has complied with the reporting requirements of WAC 480-109-120 and RCW 19.285.070 in the 2022-2023 Biennial Conservation Report (BCR);
- (2) Has not complied with Order 01¹ in Docket UE-210826;
- (3) Achieved 67,889 megawatt-hours (MWh) of its accepted 2022-2023 EIA target of 101,566 MWh,² a deficit of 33,677 MWh;
- (4) Applied 67,889 MWh to its accepted 2022-2023 EIA penalty threshold of 91,054 MWh, a deficit of 23,165 MWh;
- (5) Achieved no excess conservation during the 2022-2023 biennium;
- (6) Is subject to penalties in the amount of \$1,684,558.80, pursuant to RCW 19.285;
- (7) Applied 0 MWh of conservation savings to its accepted 2022-2023 decoupling commitment of 5,078 MWh, a deficit of 5,078 MWh;
- (8) Has not complied with its conservation decoupling mechanism pursuant to Order 05 in consolidated Dockets UE-140188 and UG-140189; and
- (9) Is subject to penalties in the amount of \$369,272.16, pursuant to Order 05 in consolidated Dockets UE-140188 and UG-140189 for failure to meet its decoupling commitment.

Background

The Energy Independence Act (EIA)³ requires Washington’s electric utilities to “pursue all available conservation” that is cost-effective, reliable, and feasible. Electric utilities must acquire

¹ 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, Order 01 at 7, ¶ 27 (Jan. 18, 2022).

² The 2022-2023 EIA Target is a statutory goal according to RCW 19.285.040(1)(b). This number is different from the EIA penalty threshold which is the basis for calculating the penalty.

³ RCW 19.285.040.

this conservation by setting (and achieving) biennial conservation targets.⁴ The Washington Utilities and Transportation Commission (Commission) must determine whether utilities have acquired enough conservation resources to comply with the conservation targets established in their 2022-2023 biennial conservation plans. The Commission acknowledged Avista's biennial conservation plan (BCP) and targets at the recessed Open Meeting on January 18, 2022.

On May 31, 2024, Avista Corporation d/b/a Avista Utilities (Avista of Company) filed with the Commission its gas and electric 2022-2023 BCR,⁵ as well as gas and electric 2023 annual conservation reports (ACRs) in the same docket as its corresponding BCP. On July 24, 2024, Commission Staff (Staff) filed responsive comments on the Company's BCR.⁶

Targets

Please see the Avista's filed numbers in Table 1. As previously mentioned in Comments,⁷ Staff disagrees with these numbers and recommend that the Commission exclude distribution (Dx) savings from Avista's EIA penalty-liable achievement and adopt Staff's revised numbers (Table 2, adjusted fields marked gray).⁸ For more information, please see Discussion section below.

According to the revised numbers, Avista missed its EIA target of 101,566 MWh by 28,063 MWh. Similarly, Avista fell short of its EIA penalty threshold of 91,054 MWh by 23,165 MWh. Additionally, the Company did not reach its 5,078 MWh decoupling penalty threshold.

⁴ WAC 480-109-100(3).

⁵ 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, 2022-2023 Biennial Conservation Report at 5 (May 31, 2024) (Avista's BCR).

⁶ 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, Commission Staff Comments Regarding Electric and Natural Gas Utility Conservation Achievements (July 24, 2024) (Staff's BCR Comments).

⁷ *Id.* at 16-17.

⁸ See *infra* Discussion section, Treatment of Distribution System Savings.

Table 1: Avista's Electric Targets and Achievements (MWh)

A	Total Conservation Goal	106,644
B	Decoupling Penalty Threshold ⁹	5,078
C	Total Conservation Achievement	84,827
D	% of Total Conservation Goal Achieved (C/A X 100%)	80%
E	EIA Target	101,566
F	EIA Penalty Threshold	91,054
G	EIA Penalty Threshold plus Decoupling	96,132
H	Excess Savings Applied	4,841
I	EIA Penalty-Liable Achievement	79,213
J	% of EIA Penalty Threshold Achieved (H/F X 100%)	87%

Table 2: Avista's Revised Electric Targets and Achievements (MWh)

A	Total Conservation Goal	106,644
B	Decoupling Penalty Threshold ¹⁰	5,078
C	Total Conservation Achievement	73,503
D	% of Total Conservation Goal Achieved (C/A X 100%)	69%
E	EIA Target	101,566
F	EIA Penalty Threshold	91,054
G	Excess Savings Applied	4,841
H	EIA Penalty-Liable Achievement	67,889
I	% of EIA Penalty Threshold Achieved (H/F X 100%)	75%

* Revised fields are marked gray.

Discussion

Basis for Fines for Failure to meet Electric Conservation Goals

RCW 19.285.060(1) provides that a qualifying utility that fails to comply with the energy conservation or renewable energy targets established in the EIA shall pay an administrative

⁹ Included in Total Conservation Goal (Row A).

¹⁰ Included in Total Conservation Goal (Row A).

penalty to the State of Washington in the amount of fifty dollars for each megawatt-hour of shortfall, adjusted for inflation beginning in 2007.

According to the revised numbers in Table 2, Avista achieved 67,889 MWh toward its EIA penalty threshold of 91,054 MWh, falling short by 23,165 MWh. Staff calculated the EIA penalty for Avista by multiplying \$72.72¹¹ by the deficit of 23,165 MWh, to arrive at \$1,684,558.80.

RCW 19.285.040(1)(e)¹² creates an exemption for meeting conservation targets for qualifying utilities. For RCW 19.285.040(1)(e) to apply to Avista, the Company must demonstrate that it met all three conditions:

¹¹ Staff used data from the Bureau of Economic Analysis of the United States (BEA) published on the Federal Reserve Economic Data's (FRED) website for the gross domestic product (GDP) implicit price deflator (GDPDEF). FRED is a trusted resource provided by the Federal Reserve Bank of St. Louis. FRED offers a wide range of economic data and research tools and acts as a repository and distribution platform for BEA's data Staff uses in other analyses (such as the social cost of greenhouse gas). The following table displays GDPDEF by year. Staff downloaded the data highlighted in gray directly from the FRED website, <https://fred.stlouisfed.org/series/GDPDEF>.

Staff adjusted the statutory penalty rate of \$50 (RCW 19.285.060(1)) with the GDPDEF by year as follows:

DATE	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
GDPDEF		2.71	1.93	0.61	1.21	2.06	1.86	1.70	1.74	0.93	0.95	1.79	2.29	1.68	1.31	4.57	7.06	3.64
Penalty R	50.00	51.35	52.35	52.67	53.31	54.41	55.42	56.36	57.34	57.88	58.43	59.47	60.84	61.86	62.67	65.53	70.16	72.72

* displayed numbers rounded to the hundredth for convenience

For the current year, the penalty rate is \$72.72 per MWh. The administrative penalty rate formula, that results in \$72.72 up from \$50, is as follows:

$$\text{Administrative Penalty Rate}_n = \text{Administrative Penalty Rate}_{n-1} \times \left(1 + \frac{\text{GDPDEF}}{100} \right)$$

¹² RCW 19.285.040(1)(e): A qualifying utility is considered in compliance with its biennial acquisition target for cost-effective conservation in (b) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the conservation target. Events that a qualifying utility may demonstrate were beyond its reasonable control, that could not have reasonably been anticipated or ameliorated, and that prevented it from meeting the conservation target include:

- (i) Natural disasters resulting in the issuance of extended emergency declarations;
- (ii) the cancellation of significant conservation projects; and
- (iii) actions of a governmental authority that adversely affects the acquisition of cost-effective conservation by the qualifying utility.

- a. An event beyond utility's reasonable control prevented it from meeting the conservation target,
- b. Avista could not have reasonably anticipated such event in this biennium, and
- c. Avista's efforts could not have ameliorated its effects.

As discussed in more detail in the "EIA target" section below, Staff did not find enough evidence demonstrating fulfillment of (b) and (c) above. Staff finds the Utility's argument¹³ that RCW 19.285.040(1)(e) applies insufficient for reasons described below. Staff therefore recommends the Commission consider the utility out of compliance with Order 01 in Docket UE-210826, and liable to penalties as outlined in RCW 19.285.060.

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.¹⁴ Witness Ehrbar's testimony¹⁵ outlines the commitment but not the penalty mechanism.

Order 01 and Staff's memo in Docket UE-152076¹⁶ mention Staff's position that the decoupling commitment should be subject to penalties at the same level as the EIA penalty. The Commission later adopted this methodology in PacifiCorp's¹⁷ and PSE's¹⁸ rate case proceedings.

As Avista did not achieve its decoupling penalty threshold of 5,078 MWh, it is liable to \$369,272.16 in penalties. Order 05 in consolidated Dockets UE-140188 and UG-140189 does not outline penalty exemptions for failing to meet its electric decoupling commitments.

Treatment of Distribution System Savings

In 2023, Avista claimed 11,324MWh of distribution savings toward EIA-liable achievement. Staff believes this violates standard practice of properly accounting for different conservation

¹³ Avista's BCR at 5.

¹⁴ *Wash. Utils. & Transp. Comm'n v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-140188 and UG-140189, Order 05 at 11-14, ¶¶ 22-28 (Nov. 25, 2014).

¹⁵ *Wash. Utils. & Transp. Comm'n v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-140188 and UG-140189, PDE-1T at 70 (Feb. 5, 2014).

¹⁶ *In re Avista Corporation d/b/a Avista Utilities' 2016-2017 Electric Biennial Conservation Plan*, Docket UE-152076, Order 01 n.5 (Jan. 28, 2016).

¹⁷ *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Company d/b/a PacifiCorp*, Docket UE-152253, Order 12 at 49, ¶139 (Sept. 1, 2016).

¹⁸ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-170033 and UG-170034, Order 08 at 84-91, ¶¶ 249-262 (Dec. 5, 2017), with reference to JAP-1T at 144-145.

sources from different “buckets” of funding. According to RCW 19.285.030(6),¹⁹ BCPs outline potential savings from several sources:

1. increase in efficiency of energy use (consumer conservation programs),
2. production (Px) potential savings, and
3. distribution (Dx) potential savings,

Different departments within a company execute conservation programs, as opposed to Px and Dx efficiency programs. Additionally, a company’s demand side management rate adjustment schedule (conservation cost recovery tariff) funds conservation programs, while standard rates fund Px and Dx efficiency programs. Properly accounting for potentials of different conservation sources ensures integrity of targets and reports, not allowing for overlapping or double counting of savings, which could distort the accuracy of energy efficiency achievements and compliance with regulatory targets.

Avista discovered it had Dx conservation potential in 2022, after setting its biennial target in 2021. Avista included Dx savings potential in its 2023 annual conservation plan (ACP), though the potential it included (7,365 MWh) was different from what it claimed in its BCR (11,324 MWh). Staff believes that Avista should have updated its target when it discovered the savings.²⁰ By not doing that, Avista distorted the integrity of its conservation targets and achievements. In the informal conversation with Staff, Avista confirmed that the Dx savings did not influence the portfolio’s cost-effectiveness indicators, but Staff would need additional data to verify this claim. Staff provides the following evidence to support the claim that Avista should have known to update its EIA targets.

First, at least since 2014 to 2020, Avista successfully complied with this practice for treatment of Px and Dx potential savings.²¹ In its 2020 BCP, Avista identified Dx potential and included it in

¹⁹ RCW 19.285.030(6): “‘Conservation’ means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.”

²⁰ RCW 19.285.040(1)(a) provides that: “At least every two years [after January 1, 2010], the qualifying utility shall review and update this assessment for the subsequent ten-year period.” Staff believes that the statute supports the matching principle by giving utilities a way to update their EIA targets as often as needed but not less than every two years, and support integrity of the entire conservation portfolio.

²¹ In the Matter of Avista Corp. d/b/a Avista Utils.’ 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-190912, 2020-2021 Biennial Conservation Plan at 3 (Nov. 1, 2019); In the Matter of Avista Corp. d/b/a Avista Utils.’ 2018-2027 Ten-Year Achievable Electric Conservation Potential and 2018-2019 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-171091, Appendix A: 2018-2019 Biennial Conservation Report at 43-45 (May 29, 2020); In the Matter of Avista Corp. d/b/a Avista Utils.’ 2016-2025 Ten-Year Achievable Electric Conservation Potential and 2016-2017 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010,

its EIA penalty threshold.²² In these reports, Avista also demonstrated an understanding that including Dx potential increases the EIA target and EIA penalty threshold. Starting with its 2020 ACR,²³ Avista stopped showing any Px and Dx acquired savings. Second, Puget Sound Energy (PSE) and PacifiCorp included Dx savings, both potential and acquisition, in this biennium and properly accounted for potential savings.²⁴ Staff opines that this evidence points to the general

Docket UE-152076, Appendix A: 2016-2017 Biennial Conservation Report at 3-4 (Jun. 1, 2018); and In the Matter of Avista Corp.’ 2014-2023 Ten-Year Achievable Electric Conservation Potential and 2014-2015 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-132045, 2014-2015 Biennial Conservation Report at 3-4 (June 1, 2016).

²² In the Matter of Avista Corp., d/b/a Avista Utils. 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-190912, 2020-2021 Biennial Conservation Plan at 3 (Nov. 1, 2019).

²³ In the Matter of Avista Corp. d/b/a Avista Utils.’ 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-190912, 2020 Annual Conservation Report (June 1, 2021); In the Matter of Avista Corp. d/b/a Avista Utils.’ 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-190912, 2021 Annual Conservation Report (May 31, 2022); In the Matter of Avista Corp. d/b/a Avista Utils.’ 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-190912, 2020-2021 Biennial Conservation Report (May 31, 2022); 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, 2022-2023 Biennial Conservation Plan (Nov. 1, 2021) (Avista’s BCP); 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, 2022 Electric Annual Conservation Plan (Nov. 1, 2021) (2022 ACP); 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, 2022 Annual Conservation Report (May 31, 2023) (2022 ACR); 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, 2023 Electric Annual Conservation Plan (Nov. 15, 2022) (2023 ACP); 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, 2023 Annual Conservation Report (May 31, 2024) (2023 ACR); and Avista’s BCR.

²⁴ In the Matter of Puget Sound Energy’s 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-210822, 2022-2023 Biennial Conservation Plan at 28 (Oct. 29, 2021); In the Matter of Puget Sound Energy’s 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-210822, 2022-2023 Biennial Conservation Report, Exhibit 1 (May 31, 2024); In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 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-210830, 2022-2023 Biennial Conservation Plan at 3-4 (Nov. 1, 2021); and In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial

established consensus on how to account for various sources of energy efficiency, which Avista failed to do. Staff asserts that Avista not including a category of savings in the potential for target-setting, but then later including that category of savings in achieving the target is asymmetrical treatment. This asymmetry was previously discussed as an *inappropriate practice* with the company in years past during the statewide advisory group (SWAG) concerning the category of NEEA savings.²⁵

In informal correspondence with Staff, Avista noted that it made good faith efforts to request Staff's guidance on treatment of Dx savings. While acknowledging Staff did not, at the time, clarify this opinion with the Company, Staff notes that it provides technical assistance to companies, rather than guidance, as available. Per the conditions of the BCP, it is a company's responsibility to comply with policy.²⁶ Staff believes that Avista could have looked to past practice, as well as other company practice, to come to this conclusion.

Based on these arguments, Staff recommends that the Commission exclude the Dx savings from Avista's total conservation achievement and EIA penalty-liable achievement and adopt Staff's revised numbers (Table 2). According to this revision, Avista missed its EIA penalty threshold by 23,165 MWh.

EIA Targets

The EIA provides that an electric utility is exempt from the enforcement provisions of the EIA if "events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the conservation target." For Staff to make the determination that this provision applies to a qualifying utility, the utility must demonstrate that it met all three conditions:

- a. An event beyond utility's reasonable control prevented it from meeting the conservation target,
- b. The utility could not have reasonably anticipated such event in this biennium, and
- c. The utility's efforts could not have ameliorated its effects.

Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-210830, 2022-2023 Revised Biennial Conservation Report at 9-12 (May 31, 2024).

²⁵ See in the Matter of Puget Sound Energy's 2018-2027 Ten-Year Achievable Electric Conservation Potential and 2018-2019 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-171087, Report on 2018 Washington State Investor-Owned Utility Energy Efficiency Joint Advisory Group Activities and Outcomes (Jun. 11, 2019).

²⁶ 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, Order 01, Attachment A at 1 (Jan. 18, 2022).

In response to point (a), Staff finds that there is available evidence that the COVID-19 pandemic was a natural disaster.²⁷

In response to point (b), Staff did not find evidence that the COVID-19 pandemic was an event that the Company could not have anticipated, as the COVID-19 pandemic and its adverse effects were underway when the Company proposed its conservation targets.

To determine whether the Company's efforts could not have ameliorated the COVID-19 effects, in response to point (c), Staff looked for demonstration of adaptive management, which can include continuous review and updates to adapt to changing conditions and technologies, as discussed in WAC 480-109-100(1)(a)(iv). Staff found some evidence that the Company took steps in response to the COVID-19 pandemic to attempt to ameliorate its adverse effects, as outlined in Staff's BCR Comments. Ultimately, Avista still fell short of its EIA penalty threshold and EIA target. Nevertheless, Staff concludes that the year-over-year improvement shows that the Company's efforts have ameliorated some of the event's effects but not sufficiently.²⁸ As such, Staff did not find enough evidence that the Company demonstrated that it met all three standards outlined in paragraph two of this section.

The Company did provide evidence that it believes qualifies it for compliance under RCW 19.285.040(1)(e).²⁹ Staff finds this evidence insufficient because, as stated, the pandemic and its effects were to a large degree in place when the Commission approved the Company's proposed targets, and because Avista's own adaptive management shows amelioration is, to some degree, possible.

Always On Program

As described in Avista's BCR, the Always On is a behavioral program that attempts to reduce load associated with things that are "always on" in a household, such as plug load. For the first time, Avista identified Always On program in its 2021 ACP where it stated the plans to deliver

²⁷ *Proclamation by the Governor 20-05*, Governor Jay Inslee (Feb. 29, 2020). Available at: <https://governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf>; *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-190908, Order 04 at 3, ¶7 (Jul. 26, 2022); and *In the Matter of Puget Sound Energy's 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-190905, Order 03 at 3, ¶7 (Jul 26., 2022).

²⁸ 2022 ACR, Appendix E; and 2023 ACR, Appendix D.

²⁹ Avista's BCR at 5-6.

the program in the fourth quarter of 2021.³⁰ In its 2022-2023 BCP, Avista presented this program as part of the main portfolio,³¹ assigning it to deliver 8,712 MWh in residential savings, which is over 50 percent of all expected residential conservation. Along with excitement about that innovative offering, Staff and other parties voiced concern in their BCP Comments about the program and its projected savings.³² Notably, in Public Counsel's BCP comments in December 2021, it raised the issue of Avista not adhering to its own deadlines. Avista initially forecasted to launch the program in late 2021 and delayed it until Q2 of 2022.³³

With every filing, the program delay increased:

- 2022 ACP: Avista stated that it was planning to deliver this program by Q2 of 2022.³⁴
- 2023 ACP: Avista stated that it would begin this program by Q2 of 2023.³⁵
- 2022 ACR: Avista stated that it ran the first phase of the pilot from July to December 2022 but reported no savings.³⁶
- 2023 ACR: Avista stated that the program launched in July 2023 but reported no savings,³⁷ which contributed to the Company missing its biennial residential conservation target by 66 percent.

³⁰ In the Matter of Avista Corp. d/b/a Avista Utils.' 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-190912, 2021 Annual Conservation Plan at 66 (Nov. 13, 2020).

³¹ Although Avista sometimes calls this program a pilot, Staff treats this as a full program due to its significant contribution comparable to NEEA savings. When calculating their conservation portfolios, utilities can choose to exclude pilots from the EIA penalty threshold. Avista included Always On in its EIA penalty threshold, leaving NEEA out of it.

³² 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, Commission Staff Comments Regarding Gas and Electric Utility Conservation Plans at 12 (Dec. 17, 2021); 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, NW Energy Coalition Comments on Avista's 2022-2023 Biennial Conservation Plan at 2 (Dec. 17, 2021); and 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, Public Counsel Comments on Avista's 2022-2023 Biennial Conservation Plan at 2 (Dec. 17, 2021).

³³ In the Matter of Avista Corp. d/b/a Avista Utils.' 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2020-2021 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-190912, 2021 Annual Conservation Plan at 66 (Nov. 13, 2020); and Avista's BCP, Appendix B at 41.

³⁴ 2022 ACP at 41.

³⁵ 2023 ACP at 41.

³⁶ 2022 ACR, Appendices D and E. Avista did not include Always On as a program.

In informal communication with Staff, Avista conveyed that it was the first internally implemented behavioral program and noted multiple implementation challenges,³⁸ such as not knowing the evaluator's requirements for calculation of savings and lack of in-house expertise in working with meter data. While Staff is sympathetic to the issues that come with the implementation of innovative programs Staff believes these factors should have signaled the program should not have formed such a pivotal role in the residential portfolio.

Staff notes that Avista is working to adaptively manage this program into a larger behavioral program, implemented by a third party, rather than by Avista. While Staff applauds this adaptation, it is separate from the program's delays and corresponding failure to meet biennial conservation targets.

Staff therefore recommends that the Commission, at a minimum, issue a penalty equal to the EIA penalty rate times the MWh promised by Always On, which is \$633,536.64.³⁹

An alternative method would be to assign penalty based on 2022 ACP projection plus 2023 ACP adjusted projection. In that case, the penalty would equal \$454,209.12.⁴⁰

Staff notes that the proposed EIA compliance penalty already includes the Always On penalty. The Always On penalty would only apply if the Commission dismissed Staff's recommendation for the EIA compliance penalty.

Interested Parties' Comments

No interested persons or parties submitted comments to the dockets regarding the BCR or ACRs as of August 13, 2024.

³⁷ 2023 ACR, Appendices D and E. Avista reported no expenditures and no savings attributable to Always On.

³⁸ See also 2023 ACR, Appendix F at 78.

³⁹ $8,712\text{MWh} \times \$72.72 = \$633,536.64$.

⁴⁰ 2022 ACP at 20: Avista projected to acquire 4,356 MWh with Always On; 2023 ACP, Appendix D: Avista projected to acquire 1,890 MWh with Always On. $\$72.72 \times (4,356\text{MWh} + 1,890\text{MWh}) = \$454,209.12$.

Conclusion

Staff finds that the Company did not meet its electric conservation targets, nor its electric decoupling commitment. Staff does not see enough evidence that the COVID-19 pandemic was an event that the Company could not have anticipated and that the Company's actions could not have ameliorated its effects, and therefore Staff cannot make the determination that it meets the exemption provisions under RCW 19.285.040(1)(e). Staff also finds that there are no exemption provisions under Order 05 in consolidated Dockets UE-140188 and UG-140189 for failure to meet electric decoupling commitments. Staff therefore recommends that the Commission issue an order requiring the Company to pay penalties for its failure to meet its electric conservation target and its electric decoupling commitment.