



UE-210826/UG-210827

**Avista Corp.**

1411 East Mission P.O. Box 3727  
Spokane, Washington 99220-0500  
Telephone 509-489-0500  
Toll Free 800-727-9170

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Mr. Jeff Killip  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

**RE: Dockets UE-210826 and UG-210827 - Avista's Comments Regarding Commission Staff Memo and Associated Penalty Assessments**

Dear Mr. Killip,

Avista Corporation, dba Avista Utilities (Avista or the Company), submits the following comments in response to the Memos issued by Staff of the Washington Utilities and Transportation Commission (Commission) in the above-referenced Dockets. In its Memos, Commission Staff provides four distinct penalty recommendations for Avista (two for electric and two for natural gas) related to Staff's perception that the Company did not comply with several regulatory requirements for the 2022-2023 biennium. While the Company proffered, and therefore supports, Staff's natural gas decoupling adjustment,<sup>1</sup> Avista disagrees with Staff's opinion that the Company has not adequately complied with the provisions of RCW 19.285.040(1)(e) for electric conservation, and believes that the proposed penalty for its natural gas conservation efforts is entirely unwarranted.

Throughout the 2022-2023 biennium, Avista has made every effort to comply with the provisions of RCW 19.285 and has kept both Commission Staff and its Energy Efficiency Advisory Group (EEAG) informed at every turn, including sharing ongoing progress made towards meeting the established targets. Avista has shown "good faith" throughout the biennial process and has made

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<sup>1</sup> As noted on p. 6 of the Company's Biennial Conservation Report (BCR), "While the Company believes that the compliance provisions of RCW 19.285.040(1)(e) are applicable to Avista's 2022-2023 compliance determination for its electric efficiency program, no similar code or rule exists for natural gas services. Rather than request exemption from a prior general rate case Order, Avista instead agrees to pay the penalty for incremental conservation shortfall below 3.75 percent. Such penalty will be funded from Avista's shareholders and not recovered through customer rates." [Emphasis added].

all reasonable efforts to achieve its targets. The Company has been entirely transparent regarding its inability to ultimately meet its targets – with Staff, its EEAG, as well as the Commission itself – throughout the biennium, and has adaptively managed its programs to provide as much course correction as possible in the wake of COVID-19, to achieve the best conservation target results for its customers.

This is not a case where penalties should be imposed on either the electric or natural gas side. For electric, there were extenuating circumstances, largely the result of COVID-19 and its ramifications, as well as the sharp rise in inflation and associated interest rates – all well beyond the control of the Company – that it could not have reasonably anticipated, and for which the Company used reasonable efforts to mitigate (through “adaptive management”). Accordingly, the law provides that an exemption is available under these circumstances.<sup>2</sup>

For natural gas, the same extenuating circumstances would excuse full compliance with meeting the targets as well. Moreover, there is no similar framework method for penalties (as for electrical companies) that would justify what Staff conceived by way of a penalty without explicit statutory authority to do so.

Avista shares the concerns expressed by Cascade Natural Gas in its comments (at p. 1), concerning the impact of this case, and the associated penalties, on the collaborative and transparent approach to energy efficiency, as we continue to work with our EEAG to relentlessly pursue all available energy savings. This includes setting aggressive targets that will be a challenge to achieve. And that is a good thing. The imposition of penalties in the absence of “bad faith” or imprudent action may, as suggested by Cascade, be counterproductive and disrupt the collaboration presently at work within the EEAG and with the Company.

The Company has outlined Staff’s penalty recommendations below, along with Avista’s response to each, and addresses the various points at which Avista and Staff’s analyses of the Company’s biennial compliance diverge.

## **I. ELECTRIC CONSERVATION COMPLIANCE (DOCKET UE-210826)**

❖ **Electric Conservation Penalty Recommendation:** Staff cites non-compliance with Order 01 in Docket UE-210826, and recommends a penalty in the amount of \$1,684,558.80 pursuant to RCW 19.285.060, based on a deficit of 23,165 MWh. This deficit calculation relies on a 67,889 MWh accomplishment, out of the approved 91,054 MWh EIA penalty threshold for 2022-2023, which

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<sup>2</sup> RCW 19.285.040(1)(e).

does not include the Company’s reported savings from its Conservation Voltage Reduction (CVR) efforts.

**Avista’s Response:** As detailed in its Biennial Conservation Report (BCR),<sup>3</sup> Avista believes it has complied in accordance with the provisions of RCW 19.285.040(1)(e), adaptively managing its programs in the wake the prolonged emergency declarations that extended through October 31, 2022 (nearly 42% of the biennium) and keeping both Staff and its EEAG sufficiently apprised of its progress along the way. In Staff’s own comments from the prior biennium<sup>4</sup> – where Avista was the only investor-owned utility to achieve its electric conservation targets<sup>5</sup> – Staff noted:

“For Commission Staff to recommend the Commission issue an order finding a utility has complied with the requirements for Biennial Conservation Reports, the company must comply per rule. For extenuating circumstances, Staff needs to see evidence of two items: 1) an identification of extenuating circumstances, 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).” [Emphasis added]

Through its 2022-2023 planning, reporting, and EEAG engagement cycle, Avista has more than demonstrated extenuating circumstances. Commission Staff itself even noted in their recent July 25, 2024 comments submitted in this docket that:

“Despite not meeting its biennial targets, Staff believes Avista demonstrated its commitment to improvement through adaptive management. As an example, Avista introduced the midstream program in 2023 which brought tangible savings above projected levels. Avista also launched a popular direct-install lighting program for small businesses that allows for low- to no-cost lighting upgrades. Avista achieved 106 percent of its 2023 electric savings target in 2023 (106,644 MWh divided by two years). The dramatic increase over 2022 (53 percent of 2022 target) illustrates that these efforts may be working.”<sup>6</sup>

In its Memo, Staff departs from the above prior comments regarding what proof of extenuating circumstances need to be demonstrated, instead directly pointing to a list of three distinct conditions to be met:<sup>7</sup>

- 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

<sup>3</sup> Dockets UE-210826 and UG-210827, BCR (May 31, 2024), p. 5-6.

<sup>4</sup> Dockets UE-190905, UE-190912 & UE-190908, *Commission Staff Comments Regarding Electric Utility Conservation Achievements Under the Energy Independence Act* (July 1, 2022), p. 6.

<sup>5</sup> Inclusive of excess savings applied per WAC 480-109-100(3)(c).

<sup>6</sup> Dockets UE-210822 and UG-210823, UE-210826 and UG-210827, UG-210830, UG-210831, and UG-210838; *Commission Staff Comments Regarding Electric and Natural Gas Utility Conservation Achievements Under RCW 19.485 and 80.28 and WAC 480-109* (July 25, 2024), p. 18.

<sup>7</sup> See Docket UE-210826, Staff Memo (August 19, 2024), p. 4.



c. Avista's efforts could not have ameliorated its effects.

Staff notes that they did not find enough evidence to demonstrate fulfillment for (b) and (c) above, stating that for (b), "the COVID-19 pandemic and its adverse effects were underway when the Company proposed its conservation targets"<sup>8</sup> and that for (c) "Staff found some evidence that the Company took steps in response to the COVID-19 pandemic to attempt to ameliorate its adverse effects...Ultimately, Avista still fell short of its EIA penalty threshold and EIA target...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."

**In short, Staff believes that while Avista *did* adaptively manage its programs to ameliorate the headwinds it faced from the COVID pandemic, the Company's efficient adaptive management, in a bit of irony, only serves as further proof of its failure to comply; specifically, the act of being able to move the dial only somewhat just proves that the dial can be moved, and therefore, because Avista was unable to completely reverse, erase or compensate for all contrary effects, it should be found entirely non-compliant.** To this, the Company posits, what is the intention of RCW 19.285.040(1)(e)? For Avista, the phrase "events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the conservation target" means that, despite a utility's best efforts in adaptive management, the utility is still unable to fully achieve its targets due to circumstances that it could not reasonably control, foresee, or improve/make better. This is exactly what the Company believes it has accomplished, and provided evidence of throughout the biennium in its 2022 and 2023 Annual Conservation Plans (ACPs),<sup>9</sup> Annual Conservation Reports (ACRs),<sup>10</sup> and ongoing conversations with its EEAG. To elaborate:

1. **Beyond the reasonable control of the utility.** COVID-19 was indeed a factor in both the prior 2020-2021 biennium as well as the 2022-2023 biennium in question; for 2022-2023 in particular, it was also the added impact of customer behavior well after the pandemic and emergency declarations ended (the "COVID Hangover") that interfered with the ability of Avista to adequately achieve its electric conservation targets. As noted in the BCR (as well as multiple times throughout the biennium within its Biennial Conservation Plan (BCP), ACPs, ACRs and EEAG meetings), the lack of return to work and subsequent economic downturn

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<sup>8</sup> Id., p. 9.

<sup>9</sup> Dockets UE-210826 and UG-210827, ACPs filed November 1, 2021 and November 15, 2022, respectively.

<sup>10</sup> Dockets UE-210826 and UG-210827, ACRs filed June 1, 2023 and May 31, 2024, respectively.



(e.g., dramatic rise in inflation, increased interest rates to help curb that inflation) only further constrained customers' willingness to spend capital or to acquire products for conservation efforts. Staff believes that in being aware of COVID's existence, Avista should also have been able to adequately foresee the potential impact – including the complete extent and full duration of its economic impact, and its effect on customer behavior – in such a way as to include such a premonition in its 2022-2023 target setting process. This expectation is wholly unrealistic.

2. **Could not have been reasonably anticipated.** Staff states that “the pandemic and its effects were to a large degree in place when the Commission approved the Company’s proposed targets.” In terms of timing and process setting for biennial conservation targets, it is important to note that while the electric target for 2022-2023 was approved by the Commission in January 2022,<sup>11</sup> the factors contained within the Conservation Potential Assessment (CPA) upon which the targets are based (pursuant to RCW 19.285.040(1)(a)&(b), and WAC 480-109-100(2)&(3)) utilize critical data from years prior to COVID, and could therefore skew the targets in our post-COVID world. The CPA itself, for example, was completed in December 2020,<sup>12</sup> and utilized multiple data sources that were finalized *prior to* COVID’s arrival in 2020.<sup>13</sup> In addition, while the pandemic and its residual consequences may have, indeed, been in effect, the referenced “COVID Hangover” was only an anecdotal possibility, and simply not something that the Company could have adequately, and accurately, anticipated in such a way as to impact its data-driven conservation targets. Even if Avista could have anticipated the effects and duration of the residual consequences of the State’s emergency proclamation (which lasted from February 29, 2020, until October 31, 2022) on our ability to achieve our biennial target, how would the Company have been able to actually quantify those impacts? Attempting to do so would have involved a novel approach to establishing targets, basing them upon broad assumptions and affected by innumerable uncertainties. For instance, when establishing Avista’s biennial conservation targets, the Company had no means of even knowing when Governor Inslee would rescind the state of emergency. Thus, it was appropriate for Avista to adhere to the requirements of law and standard practice in setting its biennial

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<sup>11</sup> UE-210826, Order 01.

<sup>12</sup>Docket UE-200301, Avista 2021 Electric Integrated Resource Plan (IRP), Appendix E – AEG Conservation Potential & Demand Response Potential Assessments (Completed December 1, 2020).

<sup>13</sup> Ibid., p. 13 (perform market characterization study with 2019 base year) and p. 24 (Annual Energy Outlook).

conservation targets rather than doing as Staff suggests we should have done: Make a wild guess. Avista made a good faith effort to do what has been historically required of us to propose “achievable cost-effective conservation potential.”

3. **Could not have been reasonably ameliorated.** Based on the definition of ameliorate, which is to improve upon or make tolerable (synonymous with “better” or “improve”),<sup>14</sup> the Company agrees that it was able to partially ameliorate some of the conservations savings that could have otherwise been lost as a result of the COVID emergency declarations and the economic and behavioral outcomes that followed. Avista disagrees, however, with Staff’s suggestion that any efforts to adapt a utility’s conservation programs throughout the biennium – either through the usual course of business, or in order to mitigate what could have been a much larger deficit in target achievement during a time when unanticipated factors are in play – somehow automatically disqualifies a utility for being in compliance with its targets, under RCW 19.285.040(1)(e). Staff’s stance that compliance under RCW 19.285.040(1)(e) is not allowable, in part, “because Avista’s own adaptive management shows amelioration is, to some degree, possible”<sup>15</sup>, essentially undermines any attempt at adaptive management that is not wholly successful, because it becomes evidence to be used against the utility.

### *Biennial Conservation Targets*

The Commission is well aware of the electric target for Avista for this biennium (including decoupling), which was 96,132 MWhs.<sup>16</sup> The prior target for the 2020-2021 biennium was 63,590 MWhs, leading to an increase over the two biennia of **over 51%**. In comparison to our fellow utilities for the same timeframe, Pacific Power and Light Company (PacifiCorp) only had an increase of 0.6% between the two biennia, and Puget Sound Energy (PSE) had a 14.3% increase. Illustration No. 1 below shows the raw change in MWh targets from the 2020-2021 biennium to the 2022-2023 biennium (note that Avista’s increase percentage was more than triple the size of PSE’s, and of course Avista is dramatically smaller in size). The Commission is also aware that, by the very nature of target setting process,<sup>17</sup> there are instances where utilization of the prescribed two-year pro-rata

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<sup>14</sup> [Ameliorate Definition & Meaning - Merriam-Webster](#)

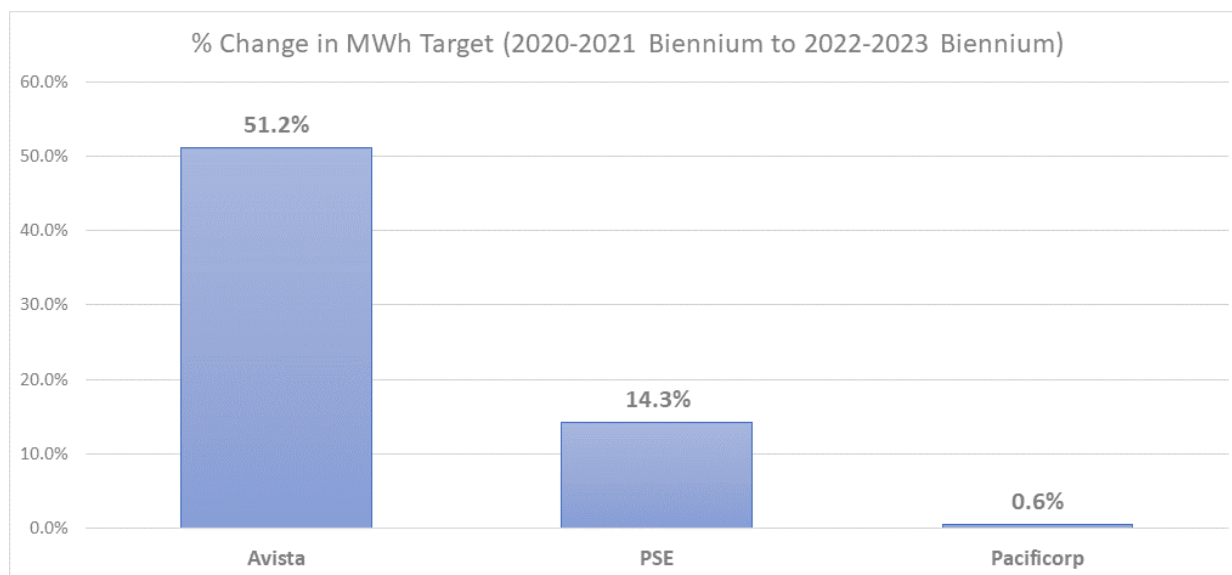
<sup>15</sup> Docket UE-210826, Staff Memo (August 19, 2024), p. 9.

<sup>16</sup> Ibid., p. 3.

<sup>17</sup> Avista establishes its target in accordance with RCW 19.285.040, which states that utilities must use methodologies consistent with those used by the Northwest Power and Conservation Council (NWPCC) and establish a two-year target consistent with the identification of achievable opportunities. This target *must be no lower than the pro-rata share of the two-year period* of its cost-effective potential for the subsequent ten-year period. In other words, the Avista-share over a ten-year period is levelized into the biennial period, and does not account for a ramping of savings.

methodology essentially accelerates the adoption of energy efficiency and effectively requires the utility to pursue a “pro-rata” target based on conservation and technology that is not projected to exist until future years in the identified 10-year achievable savings. This was the case with the 2022-2023 biennium, which, in effect, frontloaded projected savings into this biennium (and right into a severe pandemic, inflationary environment, and supply chain disruption).

**Illustration No. 1 – % Change in MWh Target from 2020-2021 to 2022-2023 Biennia**



*Always On Program*

In its Memo,<sup>18</sup> Staff recommends that the Commission, at a minimum, issue an electric penalty related to the Company’s lack of savings associated with its Always On pilot program. The two penalty options suggested are: 1) \$633,536.64, which is equal to the EIA penalty rate of \$72.72/MWh times 8,712 MWh, which is the amount Staff asserts was “promised” by the Always On pilot, **or** 2) \$454,209.12, which equates to the EIA penalty rate (\$72.72/MWh) times the sum of the Company’s 2022 and 2023 ACP projected savings for the pilot (4,356 MWh and 1,890 MWh, respectively). These recommendations, on their face, are in direct conflict with the purpose of a pilot or the directive that Avista must allocate a reasonable amount of its conservation budget towards pilot programs, research, and data collection.<sup>19</sup> Though Staff arbitrarily qualifies Always On as a “full program”,<sup>20</sup> rather than

<sup>18</sup> Ibid., p. 11.

<sup>19</sup> Docket UE-210826, Order 01, Attachment A, Condition 4.

<sup>20</sup> Docket UE-210826, Staff Memo (August 19, 2024), p. 10, Fn. 31.





a pilot, due to its “significant contribution” to Avista’s conservation portfolio,<sup>21</sup> at the time it was introduced within the Company’s 2022-2023 BCP, the Always On pilot contributed to less than 10% of Avista’s electric conservation portfolio (approximately 4,356 MWh in annual savings), and was only further decreased within the 2023 ACP (to approximately 1,890 MWh), once Avista found the program to be not performing as anticipated. Behavioral programs have historically been a large component of Avista’s residential offerings, so it is not unheard of to have a customer behavior pilot forecasted to accomplish a large portion of residential savings. When its BCP was established in 2021, in response to the comments received from other parties as part of its BCP draft circulation pursuant to WAC 480-109-110(3), Avista committed to working with its EEAG throughout the biennium to explore other avenues for identifying and attaining savings – such as midstream, increasing traffic through the Company’s former Marketplace platform, and targeted offerings for Named Communities – but strongly believed in the potential savings of targeting “always on” customer load.<sup>22</sup>

❖ **Electric Decoupling Penalty Recommendation:** Staff cites non-compliance with Order 05 in Dockets UE-140188 and UG-140189 (*Consolidated*), and recommends a penalty in the amount of \$369,272.16 in accordance with this Order. In not meeting its base EIA penalty threshold target, Avista naturally did not achieve any of its additive 5 percent decoupling commitment of 5,078 MWh.

**Avista’s Response:** Regarding the amount of the penalty recommendation, Staff notes in their Memo that while both PAC<sup>23</sup> and PSE<sup>24</sup> rate cases have adopted a methodology that mimics RCW 19.285.060, Avista has no such methodology in its own cases, but should adhere to the same methodology as its peer utilities. Avista is willing to accept Staff’s application of this methodology, however, does not accept Staff’s determination of non-compliance altogether, based on prior precedence. In Dockets UE-190905 et. al., both PSE and PacifiCorp were found in compliance with their biennial electric conservation targets in accordance with RCW 19.285.040(1)(e), despite having not fully achieved their targets, and in doing so were also not subject to the corresponding decoupling

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<sup>21</sup> Id.  
<sup>22</sup> Dockets UE-210826 and UG-201827, 2022-2023 BCP Appendix B (2022 Electric and Natural Gas Energy Efficiency ACPs), p. 39-41.  
<sup>23</sup> *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).  
<sup>24</sup> *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.





commitment penalties contained within their respective rate case orders.<sup>25</sup> Avista believes that, if compliance is determined under RCW 19.285.040(1)(e), then the complete penalty threshold (decoupling included), is encompassed within the compliance determination.

## II. NATURAL GAS CONSERVATION COMPLIANCE (DOCKET UG-210827)

❖ **Natural Gas Penalty Recommendation:** Staff cites non-compliance with Order 01 in Docket UG-210827 and RCW 80.28.380, and recommends a penalty in the amount of \$ 2,002,077.91 pursuant to RCW 80.04.380, based on a deficit of 1,038,575 therms.

**Avista's Response:** While Avista acknowledges its deficit in adequately meeting its natural gas conservation target for the 2022-2023 biennium, the Company disagrees with Staff's penalty approach and associated calculations as it pertains to the penalization of natural gas conservation targets.

To start, the requirement that natural gas companies identify and acquire all conservation measures that are available and cost effective – and develop an acquisition target for such conservation every two years (based on a on a CPA prepared by an independent third party and approved by the Commission) – was established in 2019 as part House Bill 1257 (HB 1257), otherwise referred to as the “building performance standard” or “Clean Buildings” bill/ act. This natural gas conservation statute, codified as RCW 80.28.380, is markedly different from its electric counterpart found in RCW 19.285.040 as part of the Energy Independence Act (EIA or I-937) of 2006. For example, RCW 19.285.040(1)(b) requires that the utility must establish and meet its biennial acquisition target for electric, and provides an avenue for administrative penalties in the event that this requirement is not met (RCW 19.285.060); the natural gas provisions of RCW 80.28.380, however, provide no such mention of penalty for not achieving the target.

Also worth noting is that RCW 80.28.380 does not provide, as RCW 19.285.040 does, an exception for force majeure like those contained within RCW 19.285.040(1)(e); one can deduce that such exceptions are warranted for electric utilities because failure to meet electric conservation targets may result in the application of an administrative penalty, but no such exemption is contained within natural gas statute, as the law did not anticipate these targets being subject to administrative penalty.

To that end, it is Avista's belief that the Legislature did not intend for the Commission to

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<sup>25</sup> For example, Docket UE-190905, Order 03, ¶ 3 provides the approved achievements for compliance for PSE. For further context, PSE's BCR at p.6-7 explains that their reported electric achievements are a result of the EIA Penalty Threshold plus Decoupling Penalty Threshold.

impose a penalty on a natural gas utility for its failure to meet its conservation targets, but rather to further encourage “a smooth transition to a low carbon energy economy in Washington.”<sup>26</sup> by promoting renewable natural gas and the advancement of energy efficiency through building codes, retrofit incentives, building design, efficiency standards, and a formalized requirement to pursue all available and cost-effective natural gas conservation – all complementary objectives of HB 1257. Washington’s electric and natural gas utilities continue to put their best efforts forward in providing a clean energy transition that is equitable and affordable for its customers, and the arbitrary penalization of natural gas conservation does not serve to benefit any parties involved (the Company nor its customers).

Additionally, if the general penalty authority under RCW 80.04.380 was intended to apply to gas conservation requirements, as Staff asserts, then the Commission would have adopted an Administrative Code specifying the details requisite for a gas utility to understand how a penalty under that statute would be applied (as is true for electric). Absent such a WAC that outlines the procedural details for applying RCW 80.04.380, natural gas utilities are deprived of knowing when and how they might be in violation and how penalties, especially continuing penalties, would be applied to their circumstance.

In its Memo, Staff notes that it is “reasonable to apply similar standards across companies and fuels” (p. 3), and Staff looked to evidence related to Avista’s gas target in two areas: (1) circumstances under RCW 19.285.040(1)(e); and (2) demonstrated “adaptive management” as described in WAC 480-109-100(a)(iv) (i.e., adapting to changing circumstances). Staff characterized their basis for fines in this biennium as a “case of first impression,” acknowledging that RCW 80.28.380 does “not provide language describing penalties for failing to meet the requirement.” (Memo at p. 3) Indeed, Staff concedes that the language is “ambiguous as to how a ‘violation’ applies to a missed target.” *(Id.* at 4) And yet, Staff has presumed to arrogate itself the requisite power to craft a remedy (i.e., a penalty). Any “penalty” provision, however, should be sufficiently definite and clear to all parties, in order to provide “fair notice” to a party of the consequences of its failure to meet its obligations. That is not the case here. Avista is left to discover, well after the fact, what the range of proposed penalties might be, and that is based on Staff’s efforts to manufacture a “penalty framework.” (At least on the electric side, the penalty provisions are made clear on the face of the statute and provide some sort of “notice” of the possible consequences of non-compliance).

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<sup>26</sup> RCW 80.28.380. Findings—2019 c 285(b).

In short, this “ex post facto” approach of Staff satisfies no tenet of fairness and does not comport with how penalties (in any context) are meant to operate. So what factors should the Commission consider in light of this ambiguity? First, and foremost, it should be understood that the Commission has discretion to decide, within limits, what if any penalties should be assessed. While RCW 80.28.380 sets forth targets for natural gas utilities, the underlying Commission authority to assess penalties resides in RCW 80.04.380, which provides the general authority of the Commission to assess penalties for violation of statutes or orders:

...Any public service company which shall violate or fail to comply with any provision of this title [Title 80], or which fails, omits or neglects to obey, observe, or comply with any order, rule, or any direction, demand, or requirement of the Commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense...(Emphasis added)

This Commission, in MCI Metro Access Transmission, Docket. No. UT-971063, “Commission Decision and First Order Denying U.S. West’s Petition to Reopen” [hereinafter the MCI Final Order], noted the discretion afforded the Commission as to whether to assess any penalty under the statute:

. . . RCW 80.04.380 [supra] grants the Commission discretion whether to subject a party to a penalty without opportunity to mitigate. Discretion whether to assess penalties under RCW 80.904.380 serves the public interest by retaining all power expressly granted to the Commission by law. (Emphasis added) (Para. 150).

The Commission went on to describe several criteria it uses to determine whether to exercise its discretion to assess a penalty:

. . . [this includes] but not limited to, whether (1) the offending conduct was associated with new requirements and issues of first impression, (2) the offending party should have known its conduct constituted a violation, (3) the offending conduct was knowing and intentional, (4) the offending conduct was gross or malicious, (5) repeated violations occurred, (6) the Commission had previously cited violations, (7) the offending conduct improved, and (8) that remedial steps were undertaken. (Para. 158)

These factors all militate against the assessment of any penalty in this case, as Avista has illustrated alignment with all the above criteria. (1) This is the first complete biennium for which the natural gas conservation target provisions of RCW 80.28.380 are now in place; (2) As stated previously, RCW 80.28.380 does not contemplate penalties for natural gas utilities. Even if looking to RCW 80.04.380 to establish a penalty for non-compliance with the Commission’s Order approving its natural gas

conservation targets (Order 01, Docket UG-210827), the timing for which the Commission could or would establish a penalty is in question, as the new biennium has already started well before any order of non-compliance could be issued; (3) At no point in this or any other biennium does Avista knowingly or intentionally miss an opportunity to pursue all conservation that is cost-effective, reliable, and feasible; (4) As with criteria (3), Avista’s inability to meet a conservation target is never gross or malicious; (5) This is Avista’s first time not having met its penalizable conservation targets; (6) The Commission had not previously cited Avista for violations; (7) The offending conduct improved, as witnessed by the “favorable improvement in customer participation in 2023 for both electric (117% savings increase over 2022) and natural gas (6.5% savings increase over 2022) due to its agile management of its programs”<sup>27</sup>; (8) Remedial steps were taken, with “Avista itself, along with external partners and trade allies, and with its Energy Efficiency Advisory Group (EEAG or Advisory Group), launched new programs, adjusted incentives, and invested in targeted efficiency approaches, all in an effort to offset the deep and lasting effects of the COVID-19 pandemic”.<sup>28</sup>

Finally, the Commission also explicitly rejected in MCI (supra) the notion that it “must always assess penalties” if it finds that violations occurred:

. . . the Commission retains the full authority to assess or adjust a penalty at any level – from zero to the full amount authorized – that fits the circumstances of any given case and the process requirements of the pertinent statute. (Emphasis added) (fn. 22 of MCI Final Order (supra)).

Lastly, it is important to recognize the purpose of assessing penalties:

Finally, the assessment of penalties for violations of law is meant to be corrective, not retributive. The purpose is to secure compliance by incenting reasonable and appropriate conduct by the offending party. (MCI Final Order at para. 154)

### III. CONCLUSION

For the reasons described above, Avista believes that the penalty recommendations contained within Staff’s Memos in Dockets UE-210826 and UG-210827 should be denied. The Company has made every reasonable effort, in good faith, to meet its biennial targets, and has kept its EEAG (inclusive of Commission Staff) updated on its progress in trying to achieve these targets on a multitude of occasions throughout the biennium. As of July 31, 2024, Avista has already achieved

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<sup>27</sup> Dockets UE-210826 and UG-210827, BCR (filed May 31, 2024), p. 5.

<sup>28</sup> Id.



approximately 63% of its biennial 2024-2025 EIA Penalty Threshold target of 47,635 MWh for electric, and 29% of its 1,903,086 therm target for natural gas. The Company has also begun working with its EEAG regarding how it might better hone its targets to be more accurately reflective of the feasibility of such conservation achievements.

If, however, the Commission is otherwise inclined to impose penalties, but for the \$75,000,<sup>29</sup> there are multiple questions of fact surrounding the Company's efforts to meet its conservation target that should be explored in an evidentiary hearing. Alternatively, the Commission might set this matter over for sixty (60) days, should it desire additional information. If you have any questions regarding this filing, please contact Nicole Hydzik at (509) 495-8038 or [Nicole.Hydzik@avistacorp.com](mailto:Nicole.Hydzik@avistacorp.com).

Sincerely,



Nicole Hydzik  
Director of Energy Efficiency and Products & Services

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<sup>29</sup> See above Footnote 1 (p.1).

