

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

DOCKET UE-210826

Avista Corporation d/b/a Avista Utilities,

ORDER 02

2020-2029 Ten-Year Achievable Electric  
Conservation Potential and 2022-2023  
Biennial Conservation Target Under RCW  
19.285.040 and WAC 480-109-010

REGARDING AVISTA CORPORATION  
D/B/A AVISTA UTILITIES’ 2022-2023  
BIENNIAL ELECTRIC TARGET  
REPORT, WAIVING PENALTY

**BACKGROUND**

- 1 The Energy Independence Act (EIA)<sup>1</sup> requires Washington’s electric utilities to “pursue all available conservation” that is cost-effective, reliable, and feasible. Electric utilities are required to acquire this conservation by setting (and achieving) biennial conservation targets.<sup>2</sup>
- 2 To address extenuating circumstances such as those arising from the COVID-19 pandemic and the effects of inflation, the Legislature adopted, effective in July 2021, subsection 1(e) of RCW 19.285.040<sup>3</sup> to allow an electric utility to be considered in compliance even when failing to meet its biennial acquisition target for cost-effective conservation in certain circumstances. This subsection states that even if a utility has not achieved its target, it can be “considered in compliance” with its biennial acquisition target if there were “events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the conservation target.”<sup>4</sup>

<sup>1</sup> RCW 19.285.040.

<sup>2</sup> WAC 480-109-100(3).

<sup>3</sup> RCW 19.285.040(1)(e).

<sup>4</sup> RCW 19.285.040(1)(e) goes on to state: “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

- 3 On May 31, 2024, Avista Corporation d/b/a Avista Utilities (Avista or Company) filed its 2022-2023 Biennial Conservation Report with the Washington Utilities and Transportation Commission (Commission) in Docket UE-210830, as rule requires.<sup>5</sup> A revision to its Biennial Conservation Report was filed on June 21, 2024, to address errors found in Staff’s draft report review.
- 4 In comments on electric biennial conservation reports, filed July 24, 2024, Commission staff (Staff) notes 2022-2023 were difficult years for conservation achievement.<sup>6</sup> The pandemic left lingering effects of an overflow of challenges, such as customer financial challenges; changes in customer demand; and labor and supply chain shortages. These elements added to the already significant challenges utilities face in achieving the remaining conservation in the region.<sup>7</sup>
- 5 Table 1 summarizes Avista’s electric conservation target achievements as outlined in the Company’s biennial and annual conservation reports.

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

A	Total Conservation Goal	106,644
B	Decoupling Penalty Threshold <sup>8</sup>	5,078
C	Total Conservation Achievement	84,827
D	% of Total Conservation Goal Achieved (C/A X 100%)	80%
E	EIA Target	101,566

conservation projects; and (iii) actions of a governmental authority that adversely affects the acquisition of cost-effective conservation by the qualifying utility.”

<sup>5</sup> 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).

<sup>6</sup> *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 19.284.040 and WAC 480-109-010*, Dockets UE-210830, Commission Staff Comments Regarding Electric Utility Conservation Achievements Under the Energy Independence Act (Staff Comments) (July 24, 2024).

<sup>7</sup> *Id.*

<sup>8</sup> Included in Total Conservation Goal (Row A).

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 <sup>9</sup>	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.

- 6 The Company used several adaptive management strategies including, a Midstream program addition in 2023 as well as a Contractor Incentive Program. The Company provided minimum information in its original filing concerning the extenuating circumstances that may have prevented it from accomplishing its goals.
- 7 In its review, Staff averred that Avista did not achieve its EIA or decoupling targets. Staff notes the Company did not provide sufficient evidence to qualify for compliance under RCW 19.285.040(1)(e).<sup>10</sup>
- 8 Staff reviewed the conservation reports for compliance with relevant rules and orders. If a Company did not meet its conservation target(s), Staff looked for evidence of the following two items: (1) circumstances that would allow a Company to be “considered in

<sup>9</sup> Included in Total Conservation Goal (Row A).

<sup>10</sup> Avista’s BCR at 5-6.

compliance” under RCW 19.285.040(1)(e);<sup>11</sup> 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). Additionally, Staff acknowledges the attempts from Avista to ameliorate<sup>12</sup> in response to the continued challenges faced during this biennium. The following discussion underscores some of the key dynamics underlying the Company’s achievement, highlighting adaptive management techniques employed by the utility as they reacted to this biennium’s challenges. These highlights are explored further in Staff comments.<sup>13</sup>

9 Staff recognized Avista did face challenges connected to the pandemic. While Staff acknowledges that these issues have affected Avista program delivery, Staff believes that these events could have been reasonably anticipated or ameliorated prior to and during the biennium, as the pandemic started two years prior. Notwithstanding Staff’s recommendation, the Company states that COVID-19 did amount to a condition outside the reasonable control of the utility, which could not have been reasonably anticipated, and which could not have been reasonably ameliorated.<sup>14</sup>

10 Accordingly, Staff recommends penalties for (1) failure to comply with energy conservation goals or renewable energy targets as authorized in RCW 19.285.060(1) and (2) for failing to meet decoupling targets pursuant to Order 5 in consolidated Dockets UE-140188 and UG-140189, which goes into further detail regarding decoupling triggers, rate adjustment caps, and decoupling conditions.<sup>15</sup> Order 01 and Staff’s memo

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<sup>11</sup> RCW 19.285.040(1)(e) provides circumstances where a qualifying electric utility can be “considered in compliance” with the biennial acquisition targets.

<sup>12</sup> Merriam-Webster. "Ameliorate." Merriam-Webster.com Dictionary. Accessed August 7, 2024. <https://www.merriam-webster.com/dictionary/ameliorate>. *Ameliorated: to make better or more tolerable. 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."*

<sup>13</sup> *In the Matter of Avista Corporation d/b/a Avista Utilities 2022-2023 Biennial Conservation Report*, Docket UE-210826, Staff Comments, p. 15-19 (July 24, 2024).

<sup>14</sup> *In the Matter of Avista Corporation d/b/a Avista Utilities 2022-2023 Biennial Conservation Report*, Docket UE-210826, Avista’s Comments on Staff Recommendation (August 21, 2024).

<sup>15</sup> *See Wash. Utils. & Transp. Comm’n v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-140188 and UG-140189, Order 05 at ¶¶ 22-28 (filed November 25, 2014).

in Docket UE-152076<sup>16</sup> 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's<sup>17</sup> and PSE's<sup>18</sup> rate case proceedings.

- 11 On conservation goals, due to Avista only achieving 67,889 MWh out of the 91,054 MWh EIA penalty threshold, Staff recommends penalties under RCW 19.285.060(1). Staff calculated the final penalty for Avista by multiplying \$72.72<sup>19</sup> by the MWh deficit of 23,165, to arrive at \$1,684,558.80.<sup>20</sup>
- 12 Regarding decoupling, Staff recommends penalties according to Commission Order 01 in Docket UE-210826; Avista's Two-Year Decoupling Penalty Threshold for 2022-2023 is 5,078 MWh.<sup>21</sup> Due to Avista meeting 0 out of the 5,078 MWh decoupling requirement, Staff recommends penalties under RCW 19.285.060(1), as described above

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<sup>16</sup> *In re Avista Corporation d/b/a Avista Utilities' 2016-2017 Electric Biennial Conservation Plan*, Docket UE-152076, Order 01 at 2, n.5 (Jan. 28, 2016).

<sup>17</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>18</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.

<sup>19</sup> 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).

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

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

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

<sup>20</sup> Penalty Calculation for EIA (\$72.72 \* 23,165 = \$1,684,558.80)

<sup>21</sup> *In the Matter of Avista Corporation d/b/a Avista Utilities 2022-2023 Biennial Conservation Report*, Docket UE-210826, Order 01 Accepting 2020-2029 Ten-Year Achievable Conservation Potential and 2022-2023 Biennial Conservation Target, Subject to Conditions, at 6 (January 18, 2022).

for the EIA penalties. Using the same calculation, Staff recommends Avista's penalty for failing to achieve the decoupling target should be \$369,272.16.<sup>22</sup>

- 13 Additionally, since Order 05 in consolidated Dockets UE-140188 and UG-140189 only refers to the RCW regarding potential penalties and not exceptions to penalties, Staff does not believe that the RCW language regarding exceptions to penalties applies to decoupling goals. Therefore, Staff is recommending that Avista be penalized for failing to achieve its EIA and decoupling goals. The combined fine for failing to achieve each of these goals is \$2,027,142.72.<sup>23</sup>
- 14 Following filing of Staff's recommendations on August 19, 2024, Avista filed comments on August 21, 2024. In its comments, Avista strongly contests Staff's penalty recommendations on several grounds including that the lasting impacts of COVID-19 were not reasonably anticipated at the time targets were set, the lasting impacts of COVID-19, including those on interest rates, supply chains, and customer behavior, could not reasonably be prevented.<sup>24</sup>
- 15 This matter came before the Commission at its August 22, 2024, Recessed Open Meeting.<sup>25</sup> The Commission heard comments from Staff and Avista. The Company argued conservation is important and recommended the Commission find the Company in compliance because of extenuating circumstances.

## DISCUSSION

- 16 We agree with Avista's recommendation. As a preliminary matter, we find that Avista has complied with the reporting requirements of WAC 480-109-120 and 120 and RCW 19.285.070 by timely filing a biennial conservation report to allow the Commission to determine how Avista is performing compared to its conservation targets.

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<sup>22</sup> Penalty Calculation for Decoupling (5,078 \* \$72.72 = \$342,583.92).

<sup>23</sup> \$1,684,558.80+ \$342,583.92 = \$2,027,142.72.

<sup>24</sup> *In the Matter of Avista Corporation d/b/a Avista Utilities 2022-2023 Biennial Conservation Report*, Docket UE-210826, Avista's Comments on Staff Recommendation at 4-8 (August 21, 2024).

<sup>25</sup> The Commissioners present at the August 22, 2024, Recessed Open Meeting included Chair Dave Danner, who has since retired as the issuance of this decision, but voted to approve this Order 02, at the August 22, 2024, Recessed Open Meeting.

- 17 We acknowledge that, as stated in Staff’s comments on electric biennial conservation reports, 2022-2023 were difficult years for conservation achievement. However, with the benefit comments provided during the Open Meeting, we find that lingering issues related to the COVID-19 pandemic caused challenges outside of the Company’s reasonable control, such as customer financial challenges; changes in customer demand; and labor and supply chain shortages. These elements added to the already significant challenges utilities face in achieving the remaining conservation in the region.
- 18 Under RCW 19.285.040(1)(e), “a qualifying utility is considered to be in compliance with its biennial acquisition target for cost-effective conservation 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.” The subsection goes on to explain how a utility “may demonstrate” such events, by providing an illustrative list of examples which “include” natural disasters, major cancelations, and exercises of governmental authority. While the illustrative list does include the word “and,” our plain reading of the statute is that the word “include” indicates the example conditions are meant to be illustrative, and not exclusive.<sup>26</sup> That is to say that an exercise of government authority that interfered with a qualifying utility’s ability to meet its targets, does not require an accompanying natural disaster for the event to be considered out of the company’s control. Instead, we interpret RCW 19.285.040(1)(e) as setting a broad reasonableness standard which (i) first asks if an event beyond the utility’s reasonable control occurred, before exploring (ii) whether the event could have been reasonably anticipated, and whether (iii) the company took reasonable efforts to ameliorate or mitigate the consequences of the unexpected event, once it became aware of it.
- 19 Although Avista failed to meet its conservation targets, we find that there existed sufficient circumstances to allow Avista to be “considered in compliance” for the purposes of RCW 19.285.040(1)(e). Further, the Company has shown that it has exercised adaptive management techniques in an effort to adapt to the challenges the

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<sup>26</sup> *State v. Keller*, 143 Wn.2d 267, 276 (2001) (“Courts should assume the Legislature means exactly what it says. Plain words do not require construction. The courts do not engage in statutory interpretation of a statute that is not ambiguous. If a statute is plain and unambiguous, its meaning must be derived from the wording of the statute itself. A statute is ambiguous if it can reasonably be interpreted in two or more ways, but it is not ambiguous simply because different interpretations are conceivable.”)

pandemic introduced. Thus, we find that Avista has sufficiently complied with its biennial acquisition target for cost-effective conservation to be considered in compliance, and therefore conclude that no penalty is warranted at this time.

- 20 The Commission has discretion to impose or not impose penalties. The legislative intent in the EIA and our intent in approving decoupling goals is to encourage conservation. We therefore find it appropriate to exercise such discretion for Avista's decoupling targets in a manner that is consistent with the standard provided for in RCW 19.285.040(1)(e).
- 21 As a result, notwithstanding the Company's failure to comply with Order 05 in consolidated Dockets UE-140188 and UG-140189, the Commission finds it appropriate to forgo issuing a penalty here due to the totality of the circumstances.
- 22 On this point, and for future clarity, we find it appropriate to amend Order 05 in consolidated Dockets UE-140188 and UG-140189 and Order 01 in this matter to clarify it is our intent that not only might the penalty provisions associated with the EIA apply to decoupling targets, but so too do the exemptions under RCW 19.285.040(1)(e). Notice shall be issued to interested parties so as to allow an opportunity to comment on these proposed amendments.

### **FINDINGS AND CONCLUSIONS**

- 23 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including electric companies.
- 24 (2) Avista is an electric company and a public service company subject to Commission jurisdiction. Avista is a qualifying electrical company under RCW 80.04.010.
- 25 (3) On May 31, 2024, Avista filed its Biennial Conservation Report, which showed that Avista had failed to meet its conservation targets under the EIA and its decoupling targets.
- 26 (4) Pursuant to RCW 285.040(1)(e), the Commission may determine that a utility is



considered in compliance with its biennial acquisition target for cost-effective conservation 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.

- 27 (5) The COVID-19 pandemic created circumstances beyond the control of Avista that interfered with the Company's ability to meet its conservation and decoupling targets.
- 28 (6) Avista took adequate adaptive measures to attempt to ameliorate the effect of the pandemic on its conservation efforts.
- 29 (7) This matter came before the Commission at a recessed open meeting on August 22, 2024.
- 30 (8) After reviewing Avista's report, Staff's comments, Avista's comments, and giving due consideration to relevant matters, the Commission finds that Avista has complied with the reporting requirements of WAC 480-109-120 and RCW 19.285.070 and is considered in compliance with its biennial acquisition target for cost-effective conservation and decoupling.

### **ORDER**

#### **THE COMMISSION ORDERS:**

- 31 (1) The Commission accepts Avista Corporation d/b/a Avista Utilities filed its 2022-2023 Biennial Conservation Report with the Washington's recommendation not to impose a penalty and determines that the 2022-2023 Biennial Report of Conservation Accomplishments complies with the conditions of Order 01 in Docket UE-210826, and the reporting requirements of RCW 19.285.070 WAC 480-109-120 and RCW 19.285.070 WAC 480-109-120.
- 32 (2) The Commission rejects Commission staff's recommendation to impose penalties upon Avista Corporation d/b/a Avista Utilities, pursuant to, for: (i) failure to comply with energy conservation goals approved of in Order 01 of this matter and (ii) for failing to meet decoupling targets pursuant to Order 05 in consolidated Dockets UE-140188 and UG-140189.

- 33 (3) Notice shall be issued to interested parties to amend Order 05 in consolidated Dockets UE-140188 and UG-140189, and Order 01 in this matter to clarify it is our intent that not only might the penalty provisions associated with the EIA apply to decoupling targets, but so too do the exemptions under RCW 19.285.040(1)(e).
- 34 (4) This Order shall not affect the Commission's authority over rates, services, accounts, valuations, estimates, or determination of costs, on any matters that may come before it.

DATED at Lacey, Washington, and effective February 7, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANN E. RENDAHL, Commissioner



MILTON H. DOUMIT, Commissioner