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RE: Docket UE-210830—PacifiCorp’s Comments on Staff Recommendation

PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) submits the following comments in response to Staff of the Washington Utilities and Transportation Commission (Staff) recommendation submitted in Docket No. UE-210830 on August 19, 2024.

I. Background of the PacifiCorp 2022-23 Biennial Conservation Report

On June 21, 2024, PacifiCorp filed its revised Biennial Conservation Report to demonstrate compliance with its 2022-23 biennial conservation targets established in Docket No. UE-210830.¹ In the report, the Company noted for context its targets were very high, the lasting effects of the COVID-19 pandemic made these elevated targets and the early acquisition of outer year savings very challenging, programs were impacted by multiple prolonged effects of the pandemic (*e.g.*, customer competing priorities, inflation/price increases/high interest rates, staffing issues and building vacancies, product availability/longer lead times, and general uncertainty), the Company adaptively managed its programs in an effort to achieve the targets, and in fact achieved a robust 92 percent of the Energy Independence Act (EIA) penalty threshold while also implementing Clean Energy Implementation Plan (CETA) utility actions, and modifying programs to increase Named Community participation.

The Company provided the 2022-2023 forecasted results (indicating a shortfall) to its Demand Side Management (DSM) Advisory Group 11 times,² discussed adaptive management, and disclosed the projected shortfall in its 2023 Annual Conservation Plan (draft provided October 2022, final filed November 2022). Staff is a participating member of the PacifiCorp DSM Advisory Group. The Company also noted achievements in 2023 (45,995 MWH) were significantly higher than 2022 (34,528 MWH) but not enough to make up for the shortfall in 2022. In its Biennial Conservation Report, pursuant to RCW 19.285.040(1)(e), the Company requested to be considered in compliance with its conservation targets given the prolonged economic effects the pandemic had on program performance, were beyond the reasonable

¹ *In the Matter of PacifiCorp d/b/a Pacific Power & Light Company, 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 No. UE-210830, Order No. 01 (January 18, 2020).

² 2/28/2022, 4/28/2022, 6/28/2022, 9/8/2022, 12/14/2022, 3/30/2023, 6/29/2023, 7/27/2023, 8/31/2023, 9/13/2023, 12/14/2023.

control of the Company and could not have been reasonably anticipated when forecasting the targets in 2021, and met the criteria of “natural disasters resulting in the issuance of extended emergency declaration.”³ The Company also requested to be considered in compliance with its conservation targets, pursuant to RCW 19.285.040(1)(e), due to the cancellation of “significant conservation targets” that were beyond the reasonable control and could have not been reasonably anticipated when forecasting the targets in 2021.⁴ The Company further noted in its 2023 DSM Annual Report significant customer projects cancelled or delayed. The Company let the DSM Advisory Group know five times in 2023 its plan for the Biennial Conservation Report was to state it was considered in compliance given the prolonged effects of the pandemic and cancellation of significant projects.⁵

II. Summary of Staff Recommendation

On August 19, 2024, Staff submitted its recommendation. In it, Staff acknowledges that 2022-23 were difficult years for conservation achievement.⁶ Specifically, Staff notes that the COVID-19 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.”⁷ Staff further highlights that a few projects were delayed or canceled, including seven significant energy conservation projects by our customers.⁸

Staff continues by acknowledging the Company’s efforts to ameliorate the challenges faced during the biennium, highlighting the “adaptive management techniques employed by the utility as they reacted to biennium challenges.”⁹ These strategies included: (1) increased incentives; (2) expanded online loan application offerings; (3) focusing on vendor support and small business outreach/participation in Named Communities; and (4) increased application-specific targeted outreach, among other actions.¹⁰ Staff concludes by stating that it found “evidence that the Company did take steps in response to the pandemic to attempt to ameliorate its adverse effects.”¹¹ In particular, Staff points to Table 3 in its recommendation, which “shows that the Company experienced an upward trend in conservation achievement throughout the last two biennia, reflecting its steps to ameliorate the pandemic.”¹² Importantly, while acknowledging all substantial efforts by the Company, Staff *does not* identify any additional actions the Company could have, or should have, taken to further mitigate the challenges highlighted by Staff.

³ PacifiCorp Biennial Conservation report at 7-8.

⁴ *Id.*

⁵ 6/29/2023, 7/27/2023, 8/31/2023, 9/13/2023, 12/14/2023.

⁶ Docket No. UE-210830, Staff Recommendation (August 22, 2024) (“As stated in [Staff] comments on electric biennial conservation reports, 2022-2023 were difficult years for conservation achievement.”) (hereinafter “Staff recommendation”).

⁷ Staff recommendation at 2.

⁸ Consistent with the approach taken in the biennial conservation report, to protect customer specific information, the Company is not publicly identifying which particular customers delayed or cancelled significant energy conservation projects.

⁹ Staff recommendation at 2.

¹⁰ Staff recommendation at 5.

¹¹ Staff recommendation at 6.

¹² Staff recommendation at 6.

PacifiCorp appreciates Staff's acknowledgment of the conservation difficulties experienced by PacifiCorp and its customers, as well as the proactive steps the Company took to address those challenges during the 2022-23 biennium. PacifiCorp also notes that, through our coordination with the DSM advisory group, we took every reasonable action to achieve the conservation targets. We provided updated forecasts at each DSM Advisory Group meeting and leveraged the group to test and validate whether we could do more, do something different, or if we were missing an opportunity to achieve more cost-effective savings.

Despite the foregoing analysis provided by Staff, it recommends that the Commission issue a penalty assessment in the amount of \$845,297.28 for the Company's failure to meet its 2022-23 conservation targets established in Order 01 of Docket No. 210830, which includes its incremental decoupling conservation target identified in the same order.¹³

Staff's recommendation is based on the premise that the Company should not be considered in compliance under RCW 19.285.040(1)(e).¹⁴ The statute specifies that a utility is considered in compliance, and no penalties should be assessed, if events beyond the reasonable control of that utility could not have been: (1) reasonably anticipated at the time targets were forecasted; or (2) ameliorated to prevent it from meeting its conservation targets.¹⁵ Staff makes the following arguments to support its penalty recommendation:

- A. RCW 19.285.040(1)(e) is inapplicable to certain significant conservation projects that were delayed or canceled since they were "not tied directly to the [COVID-19] pandemic."¹⁶
- B. The difficulties faced during the 2022-23 biennium were reasonably foreseeable because the pandemic started two years prior to the start of the biennium.¹⁷
- C. The difficulties faced during the 2022-23 biennium could have reasonably been ameliorated to allow PacifiCorp to meet its conservation targets.¹⁸
- D. RCW 19.285.040(1)(e) is inapplicable to incremental decoupling conservation targets within Order 01 of Docket No. UE-210830.¹⁹

¹³ Staff recommendation at 6-8.

¹⁴ Staff recommendation at 6-8.

¹⁵ RCW 19.285.040 (emphasis added).

¹⁶ Staff recommendation at 6-7 ("Additionally, seven projects were delayed or cancelled in 2023, which were not tied directly to the pandemic, totally 7,700 MWh of savings. The Company states the reasons for these cancellations as "... plant shutdown for approximately six months in 2023, market conditions, and ownership turnover.").

¹⁷ Staff recommendation at 6 ("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, and supporting documents provided by the Company show that they knew there would be challenges in in December of 2021.").

¹⁸ *Id.*

¹⁹ Staff recommendation at 7 ("Additionally, since Order 12 in Docket No. UE-152253 is only referring 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.").

III. PacifiCorp Response to Staff Recommendation

PacifiCorp responds to each one the aforementioned arguments below:

A. The delay and cancellation of customer conservation projects are events outside the reasonable control of the utility that could not have been reasonably anticipated or prevented.

Staff attempts to argue that because seven significant customer conservation projects that were forecasted to occur during the compliance period were canceled or delayed, the Company should be subject to penalties. Specifically, Staff states, “[a]dditionally, the seven projects delayed or canceled in 2023, which were not tied directly to the pandemic, totaled 7,700 MWh of savings.”²⁰ This argument is unconvincing for several reasons:

First, nothing in the statute requires that an event not “reasonably anticipated” must be tied directly to the COVID-19 pandemic. Staff appears to be interpreting the statute more narrowly than its plain wording, suggesting it applies exclusively to events not “reasonably anticipated” that arise from a pandemic. However, the plain language of RCW 19.285.040 indicates that these types of events include “*the cancellation of significant conservation projects.*” The statute does not mandate that the cancellation of a significant conservation project be associated with a pandemic. Staff’s interpretation of RCW 19.285.040 contradicts the plain language of the statute and should be given no weight by this Commission.

Second, Staff explicitly provides citation that the cancellation or delay of the referenced seven significant conservation projects were related to “plant shutdowns, market conditions, and ownership turnover.”²¹ However, Staff seems to assume that these economic conditions are completely unrelated to the unforeseeable prolonged effects of the COVID-19 pandemic. The aftermath of the pandemic had substantial impacts on the availability and costs of labor and materials in the market. Many of our customers struggled due to COVID-19’s prolonged impact on supply chains, such as difficulty finding parts or contractors/labor, as well as inflation and interest rate increases that made them either unable to complete their anticipated projects or decide that the investment was no longer cost-effective. Although PacifiCorp will not publicly disclose the hardships experienced by individual customers during the last compliance period and the impact on their conservation investments, there are publicly available sources to illustrate this general point.²² However, below are some specific examples of “cancellation[s] of significant energy conservation projects,” including the first two bullets not mentioned in the Staff recommendation:

- Completion of six significant projects that totaled approximately 3 million kWh slipped from 2023 to 2024 due to delays and the extended lead time for equipment;

²⁰ Supra fn. 17.

²¹ *Id.*

²² See e.g., Wendy Culverwell, Union Bulletin, PCA Idles Wallula Paper Mill, Lays Off Hundreds of Workers (May 10, 2023), available at: https://www.union-bulletin.com/news/northwest/pca-idles-wallula-paper-mill-lays-off-hundreds-of-workers/article_004e8576-ef90-11ed-bdc5-371b4643db81.htmls.

- Four significant projects with estimated savings totaling 2.8 million kwh were on hold from 2023 due to higher project costs caused by inflation and a lack of funding; and
- In addition, there were seven significant conservation projects, totaling 7.7 million kWh, canceled or delayed in 2023 due to a plant shut down for approximately six months in 2023, market conditions, and ownership turnover.²³

Had these customers completed/installed these significant customer projects in 2022-2023, the Company may have achieved both the EIA penalty threshold and the decoupling penalty threshold. Staff provides no argument or analysis on how the cancellation of these significant projects were reasonably anticipated at the time of forecast or could have been prevented by the Company.

At the end of the day, it is our customers who choose to invest in conservation in their respective homes and businesses. The Company's responsibility is to proactively shape the market and encourage those investments to meet our conservation targets. Despite Staff's inference to the contrary, no individual company had "reasonable control" over the unforeseen global economic impacts of COVID-19, inflation, or interest rate hikes and their corresponding impact on customers' decisions to invest in conservation or cancel significant projects. However, as illustrated in Staff's recommendation, the Company took reasonable and cost-effective measures to mitigate these unforeseeable impacts in its efforts to meet its energy conservation targets.

B. The lasting impacts of the COVID-19 pandemic were not reasonably anticipated at the time of forecasting and setting the conservation targets.

Staff premises its argument that because the COVID-19 virus existed at the time of setting conservation targets, its prolonged global effects on supply chains, labor availability, interest rates, and inflation should, or could, have been reasonably anticipated by the Company.²⁴ In other words, Staff implies that the Company should not have been ambitious with its energy conservation targets and instead speculated on the prolonged and lasting global effects of the COVID-19 pandemic and attempted to convince the Commission to set dramatically lower targets.

The underlying analysis provided by Staff is flawed because it provides no reference to either (1) the actual methodology or (2) the timeline used to set the 2022-23 biennial conservation targets. This is a glaring omission. By not explaining the methodology and/or timeline for creating these forecast targets, Staff does not provide a sufficient explanation to the Commission as to why an event, such the cancellation of a significant conservation project or the prolonged impacts of a global pandemic, may or may not be "reasonably anticipated" at the time of forecasting a conservation target.

²³ *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 2022-2031 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket No. UE-210830, PAC-Revised-ARpt-2023-Conservation-Acquisition-6-21-24.pdf at 20 (June 21, 2024).

²⁴ *Supra* fn. 18.

Below is a summary of the methodology proscribed in setting biennial conservation targets. Important for the Commission to understand is that the applicable methodology was developed in accordance with RCW 19.285.040, WAC 480-109-100, and opportunity for input from the DSM Advisory Group. This method required the 2022-23 targets be based on 2021 Conservation Potential Assessment (CPA)—which had its input assumptions locked down in April 2020—*one month after the statewide declaration of emergency for COVID-19*. At the time of locking down assumptions for the 2021 CPA, largely unknown were the full extent of virus’s epidemiology and the duration of “stay at home” mandates occurring around the world—let alone the prolonged and cascading economic effects that would persist almost two-three years later during the 2022-23 biennium. The two tables below illustrate the methodology and the timeline on which the method was performed to forecast the 2022-23 conservation targets:

Table 1: Methodology to Set 2022-23 Conservation Targets

WAC 480-109-100	Company Methodology/Steps
<p>(2) Ten-year conservation potential.</p> <p>By January 1, 2010, and every two years thereafter, a utility must project its cumulative ten-year conservation potential.</p> <p>(a) This projection must consider all available conservation resources that are cost-effective, reliable, and feasible.</p> <p>(b) This projection must be derived from the utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used in the Northwest Conservation and Electric Power Plan.</p>	<p>The Company hired a third party to prepare a Conservation Potential Assessment (CPA), using methodology consistent with the Northwest Conservation and Electric Power Plan.</p> <p>The conservation potential from the CPA was provided in the form of hourly load shapes to the Company’s Integrated Resource Plan (IRP) team.</p> <p>In the IRP, conservation resources competed with supply side resources for selection.</p> <p>Consistent with the April 2019 passage of the Clean Energy Transformation Act (CETA), the Company used the IRP’s CETA compliant preferred portfolio and incorporated a new non-energy impact (NEI) adder. The conservation selections from the CETA compliant portfolio (conservation forecast) were the basis for EIA target setting.</p> <p>To incorporate information learned after the CPA, based on what was known at the time, the Company made appropriate adjustments to the conservation forecast to account for updated Regional Technical Forum assumptions.</p> <p>The Company added Home Energy Reports (behavioral program) and reviewed savings from other types of conservation such as high-efficiency cogeneration, production efficiency, distribution</p>

	efficiency for inclusion in the target. For this biennium, there was distribution efficiency savings potential.
<p>(3) Biennial conservation target.</p> <p>Beginning January 2010, and every two years thereafter, a utility must establish a biennial conservation target.</p> <p>(a) The biennial conservation target must identify, and quantify in megawatt-hours, all available conservation that is cost-effective, reliable, and feasible.</p> <p>(b) The biennial conservation target must be no lower than a pro rata share of the utility's ten-year conservation potential.</p>	<p>The Company took the resulting ten-year conservation forecast and calculated</p> <ul style="list-style-type: none"> a) the sum of 2022+2023 (76,373 MWH at the generator) and b) the target based on pro-rata (101,191 MWH at the generator or 94,210 MWH at customer site). <p>The EIA target was the higher of the two, which in this case was (b), the pro-rata calculation.</p>

Table 2: Timeline Utilizing Methodology to Forecast 2022-23 Conservation Targets

Date	Target Setting Process	COVID-19 Response Milestones²⁵
Dec 2019	Order from Docket No. UE-190908 sets up focus for target setting for 2022-2023 on Non-Energy Impacts (NEIs), social cost of greenhouse gas emissions.	
Jan 2020	Company meeting with Commission staff – CPA and modeling overview	Nation’s first case of COVID-19 reported in Washington state
Feb 2020		Declaration of statewide COVID-19 state of emergency
March 2020		Statewide “stay at home” order and closure of non-essential businesses
April 2020	2021 CPA assumptions locked down	
May 2020		Phased business and outdoor recreation reopening begins
June 2020		Statewide mask order

²⁵ Washington Governor’s Office, *Inslee Announces End to Remaining COVID-19 Emergency Orders and State of Emergency by October 31* (September 8, 2022), available at: <https://governor.wa.gov/news/2022/inslee-announces-end-remaining-covid-19-emergency-orders-and-state-emergency-october-31>.

Sept 2020		School year begins with in-person options available
Nov 2020	Hourly load shapes for potential from CPA provided to IRP	
Dec 2020		COVID-19 vaccines begin arriving in Washington
Feb 2021	2021 CPA (2021-2040) report completed	
April 2021	Target setting discussed with DSM Advisory Group	
June 2021	Target setting discussed with DSM Advisory Group	Statewide reopening of all businesses at full capacity
July 2021	Target setting discussed with DSM Advisory Group	
Aug 2021		Vaccination requirements for health care providers and most state workers
Sept 2021	2021 IRP completed	
Oct 2021	Draft Biennial Conservation Plan (including draft target) provided to and discussed with DSM Advisory Group	
November 2021	Biennial Conservation Plan filed (including proposed target)	Vaccines approved for children ages 5-11 years
Jan 2022	Commission issues Order 01 approving target in 2022-2023 Biennial Conservation Plan	

This Commission must understand is that WAC 480-109-100 provides that the “biennial conservation target *must* be no lower than a pro rata share of the utilities ten-year conservation potential.” In other words, the biennial conservation target must be no lower than the average of the 10-year total of conservation forecast divided by five, to obtain a two-year average for the biennium.

PacifiCorp discussed adjusting the conservation targets with the DSM Advisory Group (which includes Staff) in April, June, and August 2021. PacifiCorp incorporated appropriate adjustments in consultation with DSM Advisory Group—who did not propose a COVID-19 pandemic downward adjustment. This is likely because at the time conservation targets were being set, many believed the effects of the pandemic would be “transitory,” that vaccines would make the economic impacts of the pandemic end promptly, and that everything would return to pre-pandemic normal. The Federal Reserve’s responses to the post-COVID period of high inflation are also relevant.²⁶ Notably, in April 2021, the Federal Open Market Committee (FOMC) statement introduced language suggesting that inflation was due to “transitory factors.” This

²⁶Board of Governors of the Federal Reserve System, *The Federal Reserve’s Response to the Post-COVID Period of High Inflation* (February 14, 2024), available at: <https://www.federalreserve.gov/econres/notes/feds-notes/the-federal-reserves-responses-to-the-post-covid-period-of-high-inflation-20240214.htmlx>.

“transitory” language was not removed until December 2021, after the Company filed the Biennial Conservation Plan with the targets for 2022-2023. With impacts thought to be “transitory,” it made sense at the time to continue following the established analytical process for target setting and maintain ambitious conservation targets in line with the legislative intent in RCW 19.285.020. Between March 2022 and June 2023, there were 10 interest rate hikes, varying in size from 25 to 75 basis points. The Company is not a Wall Street speculator, nor does it have a *crystal ball*, to have predicted these and other prolonged effects of the pandemic or how they would impact the Company’s ability to achieve its conservation target in 2022-23.

Even if the Company had engaged in the speculation inferred by Staff in its hindsight criticism, and attempted to dramatically lower its conservation target, including seeking any necessary waivers of WAC 480-109-100, the Commission would have had to approve an approximate 50 percent lower adjusted conservation forecast for 2022-23 for PacifiCorp to have an achieved target—given the retrospect knowledge we have today. This is because given the pro-rata methodology for target setting and the very large difference between the target based on 2022-2023 (76,373 MWH at the generator) and the target based on pro-rata (101,191 MWH at the generator), the Company would have needed to adjust its 2022-2023 energy efficiency target by approximately 50 percent in order to have enough of an impact on the 2022-2023 target based on the pro-rata calculation. However, as explained above there was not a sufficient basis for setting such a low target at the time of forecasting. In other words, there was simply no empirical evidence to support such an arbitrary adjustment, nor would have the Commission approved such a dramatic decrease if PacifiCorp proposed it—given the information known at the time.

Staff’s argument would also undermine the legislative intent codified in RCW 19.285.020, by providing incentives for utilities to no longer pursue ambitious conservation targets.²⁷ In other words, adopting of Staff recommendation would require companies going forward to engage in wild speculation and pursue downward adjustment to conservation targets for external events outside their control (*e.g.*, interest rates, job markets, inflation, supply chain constraints, regional conflicts, trade tariffs, and viruses (like the current monkey pox pandemic)). This is clearly not the legislative intent of RCW 19.285.020, and the purposes of RCW 19.285.040(1)(e) that allows utilities who strive to set ambitious conservation targets to be considered in compliance for certain events that are outside their control.

²⁷ RCW 19.285.020 (“Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.”).

C. The lasting impacts of COVID-19 could not have been reasonably prevented by the Company to meet its conservation targets. However, the Company took all reasonable and cost-effective measures in attempting to meet its conservation targets.

Without any supporting analysis, Staff concludes that the prolonged effects of COVID-19 on customer investment in energy conservation could have been prevented by PacifiCorp in order to meet its conservation targets.²⁸ While Staff commends the Company in great detail for the efforts it took to minimize the impacts of the pandemic, they fail to provide any incremental actions the Company should have taken. Instead, Staff merely offer a conclusory and unsupported statement that the economic effects of COVID-19 could have been “reasonably [] ameliorated” by PacifiCorp.²⁹

PacifiCorp strongly disagrees. As stated above, COVID-19 had lasting global impacts on the supply chain, labor, interest rates, and inflation. While Staff goes into great detail about the steps the Company took to minimize these economic impacts on its customers, concluding that it “finds evidence that the Company did take steps in response to the pandemic to attempt to ameliorate its adverse effects,”³⁰ they provide no explanation or evidence that the Company should have taken any additional cost-effective actions to fully prevent the pandemic’s impact on customer investment in energy efficiency. Staff further goes on to “commend[] [PacifiCorp’s] adaptive management.”³¹ Although Staff acknowledges these actions taken by the Company, there is a perplexing disconnect between their underlying analysis and ultimate recommendation for penalties. Staff presents insufficient evidence showing that the Company should, or even could, have undertaken incremental cost-effective activities to meet its energy conservation targets. PacifiCorp actively informed the DSM Advisory Group (which includes Staff) of forecasted shortfalls in meeting its conservation targets, and proactively sought input on additional cost-effective measures it should pursue to meet its targets. Indeed, PacifiCorp believes that, throughout its coordination with the DSM Advisory Group, it took every reasonably available action to achieve the conservation targets given the underlying circumstances in the biennium.

This is further highlighted by the fact that several investor-owned utilities did not meet their conservation targets for the 2022-23 compliance period, including Puget Sound Energy, Avista Corporation, and Cascade Natural Gas Corporation. PacifiCorp is not unique in this regard. Staff provides no evidence that a single entity could have prevented the global and prolonged economic impacts of COVID-19 on energy conservation investment. That being said, the Company reiterates that it strongly believes that, in consultation with its DSM Advisory Group, it took all reasonable, cost-effective, and good faith actions to meet its conservation targets for 2022-23.

²⁸ Supra fn. 19.

²⁹ *Id.*

³⁰ Staff recommendation at 6.

³¹ Staff recommendation at 8.

D. RCW 19.285.040(1)(e) is applicable to incremental decoupling conservation targets within Order 01 of Docket No. UE-210830.

Staff advances an alternative argument that, even if the events of COVID-19 and cancellation or delay of significant energy projects were not reasonably foreseeable or could not have been prevented, RCW 19.285.040(1)(e) is not applicable to the incremental conservation targets established in Docket No. UE-210530.³² To clarify, Order 12 of Docket No. UE-153353 established the percentage of the incremental decoupling amount, and Order 01 in Docket No. UE-210830 established a cumulative conservation target of 94,210 MWh—that is inclusive of the incremental decoupling amounts for 2022-2023. In its recommendation, Staff is in essence attempting to argue that PacifiCorp should be strictly liable for penalties if it was unable to meet *only* the incremental decoupling forecast target, that is included in the cumulative 92,147 MWh target, regardless the existence of events outside its control, that could not be reasonably anticipated when setting the targets, or prevented after the targets were established. The Commission should reject this argument for the following reasons:

First, Staff ignores the plain text in Order 12 of Docket No. UE-. In setting the incremental decoupling conservation percentage, the Commission explicitly stated that “[f]ailure to meet this incremental conservation requirement shall be subject to the same financial penalties as apply under RCW 19.285.030.”³³ The operative phrase is “**as apply.**” Under RCW Chapter 19.285, companies are considered in compliance, and penalties *do not apply*, if “events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented them from meeting the conservation targets.” Staff’s interpretation of Order 12 in Docket No. UE-210530 would contradict the plain wording of the order and *apply* penalties in circumstances that would otherwise be exempt under RCW Chapter 19.285. Accordingly, the Commission should give no weight to Staff’s interpretation.

Second, Staff operates under the incorrect premise that the conservation targets are sufficiently disconnected from one another to warrant different regulatory treatment. In reality, both conservation targets were set and approved by the Commission in order in Docket No. UE-210830, which established a single *cumulative* “[t]arget of 94,210 MWh.”³⁴ Staff highlighting this bifurcation of the overall conservation target in its recommendation seems to be an attempt to advance its argument that RCW 19.285.040(1)(e) does not apply to the incremental decoupling portion of the overall conservation target.

Third, Staff’s interpretation represents a bewildering departure from very recent Commission precedent. In the last compliance period, PacifiCorp did not meet its conservation targets,

³² Supra fn. 20.

³³ *WUTC v. Pacific Power and Light Company, a Division of PacifiCorp*. Docket No. UE-152253, Order 12 at ¶ 139 (Although the Commission cited to the definition section within Chapter RCW 19.285, it is reasonable to assume that the Commission intended to cite to the entire chapter and not just the first section in that chapter.).

³⁴ *In the Matter of PacifiCorp d/b/a Pacific Power & Light Company, 2020-2029 Ten Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285 and WAC 480-109-010*, Docket No. UE-210830. Order No. 01 ¶ 26 (January 18, 2022).

including the incremental conservation targets for decoupling.³⁵ In Docket No. UE-190908, Order 04, the Commission did not issue *any* penalties for not meeting the conservation target, including the incremental amounts associated with decoupling, because they did not apply under RCW 19.285.040(1)(E). The Commission stated:

Under RCW 19.285.040(1)(e), a company may be 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. Although PacifiCorp failed to meet its conservation targets, we find that there existed sufficient circumstances to allow PacifiCorp 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 pandemic introduced. Thus, we find that PacifiCorp has sufficiently complied with its biennial acquisition target for cost-effective conservation to be considered in compliance and conclude *that no penalty is warranted at this time*.³⁶

Consequently, Staff’s interpretation contradicts both the plain language of Order 12 in Docket No. UE-152253 and recent Commission precedent. For this reason, the Commission should give no weight to Staff’s interpretation that RCW 19.285.040(1)(e) does not apply to the incremental decoupling portion of the overall conservation target established in Docket No. UE-210830.

IV. Conclusion

PacifiCorp is deeply disappointed by Staff’s recommendation and unreasonable application and interpretation of RCW 19.285.040(1)(e). Staff is a participating member of PacifiCorp’s DSM Advisory Group. The 2022-23 conservation targets were the product of a collaborative process, with at least four meetings being conducted with the DSM Advisory Group to discuss the appropriate targets prior to being set. Furthermore, PacifiCorp actively informed the DSM Advisory Group of forecasted shortfalls in meeting its conservation targets, and proactively sought input on additional cost-effective measures it should pursue to meet its targets. We believe that throughout our coordination as the advisory group we took every reasonable and cost-effective action to achieve our ambitious conservation targets. We leveraged this group to test and validate whether or not we could do more, do something different, or if we were missing an opportunity to get more savings. We were receptive to and requested feedback, and the Company left feeling as if we were taking the right, creative actions to achieve targets.

PacifiCorp let the DSM Advisory Group know five times in 2023 its plan for the Biennial Conservation Report to state that it was considered in compliance given the prolonged effects of the pandemic and cancellation of significant projects. Yet, Staff’s recommendation came as a complete surprise with the Company and the rest of the DSM Advisory Group, only getting a

³⁵ *In the Matter of PacifiCorp d/b/a Pacific Power & Light Company, 2020-2029 Ten Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285 and WAC 480-109-010*, Docket No. UE-190908, Order No. 04 at fn. 5 (January 18, 2022) (noting that the electric conservation targets are inclusive of “the EIA penalty threshold plus the decoupling threshold and does not include regional savings.”).

³⁶ *Id.* ¶ 7 (emphasis added).

draft of their recommendation on August 16, with no time to provide any meaningful feedback, as Staff promptly filed its recommendation to this docket the next business day. Given that Staff failed to give any participant in the DSM Advisory Group meaningful time to comment on their recommendation prior to submission, PacifiCorp reached out to the participants and encouraged them to submit any feedback on Staff's recommendation at the recessed open meeting on August 22, 2024. PacifiCorp believes that consideration of any commentary on Staff's recommendation from the DSM advisory group members is in line with prior procedural equity guidelines being developed by the Commission.³⁷

Based on the foregoing, PacifiCorp respectfully requests that the Commission issue an order finding that it has complied with the reporting requirements of WAC 480-109-120 and RCW 19.285.070 and is considered in compliance, under RCW 19.285.040(1)(e) with its biennial acquisition cumulative target for cost-effective conservation set forth in Order 01 of Docket No. UE-210830. In the alternative, PacifiCorp respectfully requests that this matter be set for adjudication, consistent with due process consideration, prior to any final determination if penalties should be assessed.

Sincerely,

/s/

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Enclosure

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³⁷ Docket No. A-210217 (implementation of a policy statement concerning energy justice, including procedural equity).