

Agenda Date: August 22, 2024
Item Number: D1

Docket: UE-210822
Company: Puget Sound Energy

Staff: Wesley Franks, Regulatory Analyst
Emily Gilroy, Regulatory Analyst
Paul Koenig, Regulatory Analyst

Recommendation

Issue an order in Docket UE-210822, finding that Puget Sound Energy:

- (1) Has complied with the reporting requirements of WAC 480-109-120 and RCW 19.285.070 in its 2022-2023 Biennial Conservation Report (BCR);
- (2) Has not complied with the biennial conservation targets approved in Order 01,¹ in Docket UE-210822;
- (3) Achieved 515,443 megawatt-hours (MWh) of its accepted 2022-2023 EIA target of 497,564 MWh,² a surplus of 17,879 MWh;
- (4) Applied 467,933 MWh to its accepted 2022-2023 EIA penalty threshold of 469,182 MWh, a deficit of 1,249 MWh;
- (5) Achieved no excess conservation during the 2022-2023 biennium;
- (6) Is subject to penalty in the amount of \$90,827.82, pursuant to RCW 19.285;
- (7) Applied 0 MWh of conservation savings to its accepted 2022-2023 decoupling commitment of 24,878 MWh, a deficit of 24,878 MWh;
- (8) Has not complied with its conservation decoupling mechanism, pursuant to Order 07 in consolidated Dockets UE-121697 and UG-121705;
- (9) Is subject to penalty in the amount of \$1,809,128.16, pursuant to Order 07 in consolidated Dockets UE-121697 and UG-121705, for failure to meet its decoupling commitment.

Background

The Energy Independence Act (EIA) requires Washington’s electric utilities to “pursue all available conservation” that is cost-effective, reliable, and feasible.³ The EIA further requires electric companies to acquire this conservation by setting (and achieving) biennial conservation

¹ *In the Matter of Puget Sound Energy’s 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-210822, Order 01 at 1 (Jan. 18, 2022).

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

³ RCW 19.285.040.

targets.⁴ The Commission must determine whether utilities have acquired enough conservation resources to comply with the conservation targets established in their 2022-2023 Biennial Conservation Plans. On May 31, 2024, Puget Sound Energy (PSE or Company) filed its 2022-2023 Biennial Conservation Report (BCR) with the Washington Utilities and Transportation Commission (Commission) in the same docket as its corresponding BCP. On July 24, 2024, Commission Staff (Staff) filed responsive comments on the Company's BCR.⁵

Targets

As stated in Commission Staff comments on PSE's 2022-2023 BCR, it was a difficult biennium for conservation achievement.⁶ As shown in Table 1 below, the Company overachieved its EIA target of 497,564 MWh by 17,879 MWh but fell short of its EIA Penalty Threshold of 469,182 MWh by 1,249 MWh. Companies can meet or exceed their EIA Targets as they include savings from measures or program that are excluded from EIA Penalty Threshold calculations, including savings from the Northwest Energy Efficiency Association (NEEA), pilots, and other programs. Additionally, the Company did not achieve any of its 24,878 MWh Decoupling Penalty Threshold.

Table 1: PSE's Electric Targets and Savings (MWh)

A	Total Conservation Goal	536,717
B	Decoupling Penalty Threshold ⁷	24,878
C	Total Conservation Achievement	515,443
D	% of Total Conservation Goal Achieved (C/A X 100%)	96%
E	EIA Target	497,564
F	EIA Penalty Threshold	469,182
G	EIA Penalty Threshold plus Decoupling	494,060
H	Excess Savings Applied	0
I	EIA Penalty-Liable Achievement ⁸	467,933
J	% of EIA Penalty Threshold Achieved (I/F X 100%) ⁹	99.7%

⁴ RCW 19.285.040(b).

⁵ *In the Matter of Puget Sound Energy's 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010, Docket UE-210822, Commission Staff Comments Regarding Electric and Natural Gas Utility Conservation Achievements, at 1 (July 24, 2024) (Staff's BCR Comments).*

⁶ Staff's BCR Comments at 9.

⁷ Included in Total Conversation Goal (Row A).

⁸ Penalty-Liable Achievement (Row I) excludes savings from NEEA, Pilots, and Schedule 449. In the 2022-2023 biennium, these programs equaled 47,510 MWh of savings.

⁹ In 2022-2023 BCR Staff Comments, Staff indicated the value for Row J was 95 percent, where the correct value is 99.7 percent.

Basis for Fines for Failure to meet Electric Conservation Goals

RCW 19.285.060(1) provides that an investor-owned utility that fails to comply with the energy conservation or renewable energy targets established in the EIA shall pay an administrative penalty to the State of Washington in the amount of fifty dollars for each megawatt-hour of shortfall, adjusted for inflation beginning in 2007. Staff calculated that fifty dollars adjusted for inflation is \$72.72.¹⁰

The EIA provides that electric utilities are exempt from the administrative penalty outlined above 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.”¹¹ Qualifying events include 1) natural disasters resulting in the issuance of extended emergency declarations, 2) the cancellation of significant conservation projects, and 3) actions of a governmental authority that adversely affects the acquisition of cost-effective conservation by the qualifying utility. Staff offers its opinion on these factors in the Discussion section below.

¹⁰ Staff used data from the Bureau of Economic Analysis of the United States (BEA) published on the Federal Reserve Economic Data’s (FRED) website for the gross domestic product (GDP) implicit price deflator (GDPDEF). FRED is a trusted resource provided by the Federal Reserve Bank of St. Louis. FRED offers a wide range of economic data and research tools and acts as a repository and distribution platform for BEA’s data Staff uses in other analyses (such as the social cost of greenhouse gas). The following table displays GDPDEF by year. Staff downloaded the data highlighted in gray directly from the FRED website, <https://fred.stlouisfed.org/series/GDPDEF>.

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

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

* displayed numbers rounded to the hundredth for convenience

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

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

where $n \in (\text{Years})$

¹¹ See RCW 19.285.040(1)(e) and RCW 19.285.060(1). RCW 19.285.040(1)(e) provides that “events that a qualifying utility may demonstrate were beyond its reasonable control, that could not have reasonably been anticipated or ameliorated, and that prevented it from meeting the conservation target include (i) Natural disasters resulting in the issuance of extended emergency declarations; (ii) the cancellation of significant conservation projects; and (iii) actions of a governmental authority that adversely affects the acquisition of cost-effective conservation by the qualifying utility.”

Basis for Penalty Under Decoupling Mechanism

The Commission approved the Company's enforcement provisions for electric decoupling mechanisms in Order 07 in Docket UE-121697.¹² Specifically, the electric utility is liable to penalties equivalent to those outlined in RCW 19.285.¹³

Discussion

Electric EIA Targets

As stated above, PSE achieved 467,933 MWh toward its EIA Penalty Threshold of 469,182 MWh, falling short by 1,249 MWh, citing “lingering COVID-19 economic impacts including inflation, rising interest rates, and skilled labor shortages resulting in limited customer participation and unmet savings targets.”¹⁴ If a Company did not meet its conservation targets, Staff looked for evidence of the following two items: (1) circumstances that would allow a Company to be “considered in compliance” under RCW 19.285.040(1)(e);¹⁵ 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). Specifically, the standards that Staff looked for to determine if the effects of COVID-19 pandemic meet the standards provided for in the EIA are whether the COVID-19 pandemic was a natural disaster, whether it could not have been reasonably anticipated, and whether it could not have been reasonably ameliorated.

Staff addresses the first and third points first. Staff finds that there is evidence available to show that the COVID-19 pandemic was a natural disaster.¹⁶ To determine whether the COVID-19 pandemic was an event that could not have been ameliorated, Staff looks for demonstration of adaptive management, which can include continuous review and updates to adapt to changing conditions and technologies, as discussed in WAC 480-109-100(1)(a)(iv). Staff finds evidence that the Company did take steps in response to the COVID-19 pandemic to attempt to ameliorate its adverse effects, as outlined in Staff Comments. Table 2 shows that the Company experienced an upward trend in conservation achievement over the course of the biennium reflecting its steps to ameliorate the COVID-19 pandemic, which ultimately did not result in full amelioration.

¹² *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-121697 and UG-121705, Order 07, at 93, ¶237 (Dec. 5, 2017).

¹³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-121697 and UG-121705, Exh. JAP-1T (Testimony of Jon A. Piliaris), at 36, ¶10-17 (Oct. 25, 2012).

¹⁴ 2022-2023 BCR, at 1.

¹⁵ RCW 19.285.040(1)(e) provides circumstances where a qualifying electric utility can be “considered in compliance” with the biennial acquisition targets.

¹⁶ *Proclamation 20-05*, COVID-19, (Feb. 29, 2020),

<https://governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20%28final%29.pdf>.

Table 2: Percent of PSE's Annual Penalty-liable Savings (MWh) Achieved

Program	2018	2019	2020	2021	2022	2023
Residential	111%	113%	77%	91%	87%	114%
<i>Low-Income Weatherization</i>	92%	135%	63%	55%	69%	73%
Business (Commercial and Industrial) ¹⁷	107%	98%	74%	75%	71%	111%
Total ¹⁸	110%	105%	75%	79%	76%	110%

Regarding the second standard outlined above, Staff does not see evidence that the COVID-19 pandemic was an event that the Company could not have anticipated, as the COVID-19 pandemic and its adverse effects were underway when the targets were set. Additionally, the Company identified a forecasted shortfall of savings in its Annual Conservation Plan filed in November of 2022.¹⁹ As such, Staff does not find enough evidence that the Company demonstrated all three standards outlined in paragraph one of this section.

To calculate the penalty that PSE is liable for under RCW 19.285.060(1), Staff multiplied \$72.72 by the Company's 1,249 MWh deficit, arriving at \$90,827.28. For context, this is less than 1 percent of the Company's actual electric conservation expenditures.

Decoupling Compliance

As PSE did not achieve its electric decoupling penalty threshold of 24,878 MWh,²⁰ it is liable to \$1,809,128.16 in penalties.²¹ Order 07 in Docket UE-121697 does not outline penalty exemptions for failing to meet its electric decoupling commitments.

Stakeholder Comments

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

¹⁷ Excludes savings from Schedule 449 customers.

¹⁸ Includes savings from low-income weatherization and excludes savings from pilots, NEEA, and Schedule 449 customers.

¹⁹ *In the Matter of Puget Sound Energy's 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-210822, PSE's 2022-2023 Annual Conservation Plan, at 2 (Nov. 15, 2022).

²⁰ In Staff's BCR Comments, Staff indicated on page 8 that the decoupling penalty threshold achieved was 3,604 MWh. The correct amount of achievement is 0 MWh, as PSE did not achieve its decoupling penalty threshold.

²¹ 24,878 MWh X \$72.72 = \$1,809,128.16.

Conclusion

Staff finds that the Company did not meet its electric conservation targets, nor its electric decoupling commitment. Staff does not see evidence that the COVID-19 pandemic was an event that the Company could not have anticipated, and therefore Staff cannot make the determination that it meets the exemption provisions under RCW 19.285.060(1). Staff also finds that there are no exemption provisions under Order 07 in Docket UE-121697 for failure to meet electric decoupling commitments. Staff therefore recommends that the Commission issue an order requiring the Company pay a penalty of \$90,827.82 for failure to meet its electric conservation target and a penalty of \$1,809,128.16 for failure to meet its electric decoupling commitment.