

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

DOCKET UE-210822

Puget Sound Energy,

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 PUGET SOUND ENERGY’S 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>

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

- 3 On May 31, 2024, Puget Sound Energy (PSE 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> On July 24, 2024, Commission Staff (Staff) filed responsive comments on the Company’s BCR.<sup>6</sup>
- 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>7</sup>
- 5 As shown in Table 1 below, the Company overachieved it’s 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 <sup>8</sup>	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

<sup>5</sup> WAC 480-109-120; PacifiCorp’s electric biennial conservation target is contained within its 2022-23 Biennial Conservation Plan, which was approved in Order 01 in Docket UE-210830.

<sup>6</sup> *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).*

<sup>7</sup> Staff’s BCR Comments at 9.

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

I	EIA Penalty-Liable Achievement <sup>9</sup>	467,933
J	% of EIA Penalty Threshold Achieved (I/F X 100%) <sup>10</sup>	99.7%

- 6 The Company used several adaptive management strategies; Staff outlined in its Comments the evidence that the Company did take steps to ameliorate the adverse effects in response to the COVID-19 pandemic. The table below shows that the Company experienced an upward trend in conservation achievement throughout the last two biennia reflecting its steps to ameliorate the impacts of the pandemic.

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

<b>Program</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Residential	111%	113%	77%	91%	87%	114%
<i>Low-Income Weatherization</i>	92%	135%	63%	55%	69%	73%
Business (Commercial and Industrial) <sup>11</sup>	107%	98%	74%	75%	71%	111%
Total <sup>12</sup>	110%	105%	75%	79%	76%	110%

- 7 In its review, Staff found PSE did not achieve its EIA or decoupling targets. Staff notes that PSE asserts that the lingering effects of the pandemic and its related challenges constitute events beyond the reasonable control of the utility that prevented it from meeting its conservation target. However, Staff did not agree that PSE has provided enough justification to avoid penalties.
- 8 PSE filed responsive comments on August 21, 2024, strongly contesting Staff’s penalty recommendations on several grounds. The Company indicated that events outside the reasonable control of the utility, 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, labor availability, supply chains, and customer behavior, could not reasonably been prevented. PSE also offers that the logic and circumstances of the

<sup>9</sup> 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.

<sup>10</sup> In 2022-2023 BCR Staff Comments, Staff indicated the value for Row J was 95 percent, where the correct value is 99.7 percent.

<sup>11</sup> Excludes savings from Schedule 449 customers.

<sup>12</sup> Includes savings from low-income weatherization and excludes savings from pilots, NEEA, and Schedule 449 customers.

penalty waiver language in RCW 19.285.040(1)(e) would be appropriately applied to decoupling conservation targets.<sup>13</sup>

- 9 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 compliance” under RCW 19.285.040(1)(e);<sup>14</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 PSE to ameliorate in response to the continued challenges faced during this biennium.<sup>15</sup> 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>16</sup>
- 10 Staff recognized PSE did face challenges connected to the pandemic. While Staff acknowledges that these issues have affected PSE 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, and supporting documents provided by the Company show the Company identified a forecasted shortfall of savings in its Annual Conservation Plan filed in November of 2022.<sup>17</sup>
- 11 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 07 in Docket UE-121697 which goes into further detail regarding decoupling triggers, rate adjustment caps, and decoupling conditions.<sup>18</sup> On conservation goals, due to PSE only achieving 467,933 MWh out of the 469,182 MWh EIA penalty threshold, Staff recommends penalties

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<sup>13</sup> *In the Matter of Puget Sound Energy. 2022-2023 Biennial Conservation Report*, Dockets UE-210822 and UG-210823, PSE’s Comments on Staff Recommendation (August 21, 2024).

<sup>14</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>15</sup> Staff’s BCR Comments at 1.

<sup>16</sup> Staff’s BCR Comments at 15.

<sup>17</sup> *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).

<sup>18</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-121697 and UG-121705, Order 07, at 93, ¶237 (Dec. 5, 2017).

under RCW 19.285.060(1). Staff calculated the final penalty for PSE by multiplying \$72.72<sup>19</sup> by the MWh deficit of 1,249, to arrive at \$90,827.82.<sup>20</sup>

- 12 Regarding decoupling, Staff recommends penalties according to Order 07 in Docket UE-121697, PSE's Two-Year Decoupling Penalty Threshold for 2022-2023 was 24,878 MWh.<sup>21</sup> Due to PSE meeting 0 out of the 24,878 MWh decoupling requirement, Staff recommends penalties under RCW 19.285.060(1), as described above for the EIA penalties. Using the same calculation, Staff recommends PSE's penalty for failing to achieve the decoupling target should be \$1,809,128.16.<sup>22</sup>
- 13 Additionally, since Order 07 in Docket UE-121697 makes no reference to penalty exemptions for failing to meet its electric decoupling commitments. Staff does not believe that the RCW language regarding exceptions to penalties applies to decoupling goals. Therefore, Staff is recommending that PSE be penalized for failing to achieve its EIA and decoupling goals. The combined fine for failing to achieve each of these goals is \$1,899,955.98.<sup>23</sup>
- 14 PSE filed comments on August 21, 2024. In its comments, PSE strongly contests Staff's penalty recommendations on several grounds including events outside the reasonable control of the utility, the lasting impacts of COVID-19 were not reasonably anticipated at

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<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:

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

<sup>20</sup> Penalty Calculation for EIA ( $\$72.72 * 1,249 = \$90,827.82$ )

<sup>21</sup> *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 7, ¶ 24 (Jan. 18, 2022).

<sup>22</sup> Penalty Calculation for Decoupling ( $4,711 * \$72.72 = \$1,809,128.16$ ).

<sup>23</sup>  $\$1,809,128.16 + \$90,827.82 = \$845,297.28$ .

the time targets were set, the lasting impacts of COVID-19, including those on interest rates, labor availability, supply chains, and customer behavior, could not reasonably be prevented, and RCW 19.285.040(1)(e) is applicable to decoupling conservation targets.<sup>24</sup>

- 15 This matter came before the Commission at its August 22, 2024, Recessed Open Meeting. The Commission heard comments from Staff and PSE.<sup>25</sup> Staff reiterated its recommendations set forth in its memo and argued that Cooperative Utilities met their EIA conservation targets and therefore investor-owned utilities should have been able to as well. Staff further noted that its recommendations were based on the record before issuing its memorandum and if the Company wished for penalty waivers pursuant to RCW 19.285.040(1)(e), the Company should have provided more evidence in support of that position in its filing. The Company argued conservation is important and recommended the Commission find the Company in compliance because of extenuating circumstances.

### DISCUSSION

- 16 We agree with PSE's recommendation. As a preliminary matter, we find that PSE has complied with the reporting requirements of WAC 480-109-120 and RCW 19.285.070 by timely filing a biennial conservation report to allow the Commission to determine how PSE is performing compared to its conservation targets.
- 17 We acknowledge that, as stated in Staff's comments on electric biennial conservation reports, 2022-2023 were difficult years for conservation achievement. We further acknowledge, as noted by Staff, that PSE should have provided additional evidence to support its request for an exemption from penalties pursuant to RCW 19.285.040(1)(e). However, with the benefit of PSE's additional comments, filed the day before the Recessed Open Meeting, and those 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.

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<sup>24</sup> *In the Matter of Puget Sound Energy.2022-2023 Biennial Conservation Report*, Docket UE-210822, PSE's Comments on Staff Recommendation, at 9 (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.

- 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 PSE failed to meet its conservation targets, we find that there existed sufficient circumstances to allow PSE 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 PSE 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 PSE’s decoupling targets in a manner that is consistent with the standard provided for in RCW 19.285.040(1)(e).

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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.”)

21 As a result, notwithstanding the Company's failure to comply with Order 07 in Docket  
UE-121697, 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 07 in Docket  
UE-121697 and Order 01 in this matter, UE-210822 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) PSE is an electric company and a public service company subject to Commission  
jurisdiction. PSE is a qualifying electrical company under RCW 80.04.010.

25 (3) On May 31, 2024, PSE filed its Biennial Conservation Report, which shows that  
PSE failed to meet its conservation targets under the EIA and its decoupling  
targets.

26 (4) Pursuant to RCW 19.285.040(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 PSE that  
interfered with the Company's ability to meet its conservation and decoupling  
targets.

28 (6) PSE 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 PSE’s report, Staff’s comments, PSE’s comments, and giving due consideration to relevant matters, the Commission finds that PSE has complied with the reporting requirements of RCW 19.285.070 and WAC 480-109-120 and is considered in compliance with its biennial acquisition target for cost-effective conservation and decoupling.
- 31 (9) The Commission should accept PSE’s recommendation not to impose a penalty as the Company’s 2022-2023 Biennial Report of Conservation Accomplishments complies with the conditions of Order 07 in Docket UE-121697.
- 32 (10) The Commission should reject Commission staff’s recommendation to impose penalties upon PSE, pursuant to Order 07 in Docket UE-121697, for failure to comply with energy conservation goals as authorized in RCW 19.285.060(1).
- 33 (11) PSE’s 2022-2023 Biennial Report of Conservation Accomplishments has applied 80,523 MWh to the biennial conservation target.
- 34 (12) PSE’s 2022-2023 Biennial Report of Conservation Accomplishments has applied 0 MWh to decoupling.
- 35 (13) PSE’s has achieved 0 MWh of excess conservation savings that may be used to mitigate shortfalls in the subsequent two biennia.

**ORDER**

**THE COMMISSION ORDERS:**

- 36 (1) The Commission accepts Puget Sound Energy’s recommendation not to impose a penalty and determines that PSE’s Energy’s 2022-2023 Biennial Report of Conservation Accomplishments complies with the conditions of Order 07 in Docket UE-121697, and the reporting requirements of RCW 19.285.070 WAC 480-109-120 and RCW 19.285.070 WAC 480-109-120.
- 37 (2) The Commission rejects Commission staff’s recommendation to impose penalties upon Puget Sound Energy’s, pursuant to Order 07 in Docket UE-121697, for: (1) failure to comply with energy conservation goals as authorized in RCW 19.285.060(1) and (2) for failing to meet decoupling targets.
- 38 (3) Notice shall be issued to interested parties to amend Order 07 in Docket UE-121697 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).

- 39 (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