

Agenda Date: August 22, 2024  
Item Number: D5

**Docket:** UE-210830  
Company: PacifiCorp d/b/a Pacific Power & Light Company

Staff: Jaclynn Simmons, Regulatory Analyst  
Paul Koenig, Regulatory Analyst

### **Recommendation**

Issue an order in Docket UE-210830 finding that PacifiCorp d/b/a Pacific Power & Light Company:

- (1) Has complied with the reporting requirements of WAC 480-109-120 and RCW 19.285.070 in its 2022-2023 Biennial Conservation Report;
- (2) Has not complied with Order 01<sup>1</sup> in Docket UE-210830;
- (3) Achieved 86,961 megawatt-hours (MWh) of its accepted 2022-2023 EIA target of 94,210 MWh,<sup>2</sup> a deficit of 7,249 MWh;
- (4) Applied 80,523 megawatt-hours (MWh) to its accepted 2022-2023 EIA penalty threshold of 87,436 MWh, a deficit of 6,913 MWh;
- (5) Achieved no excess conservation during the 2022-2023 biennium;
- (6) Is subject to a penalty in the amount of **\$502,713.36**, pursuant to RCW 19.285.060;
- (7) Applied 0 MWh of conservation savings to its accepted 2022-2023 decoupling commitment of 4,711 MWh, a deficit of 4,711 MWh;
- (8) Has not complied with its conservation decoupling mechanism pursuant to Order 12 in Docket UE-152253; and
- (9) Is subject to penalties in the amount of **\$342,583.92**, pursuant to Order 12 in Docket UE-152253 for failure to meet its decoupling commitment.

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<sup>1</sup>*In the Matter of PacifiCorp d/b/a Pac. Power & Light Co 2020-2029 Ten-Year Achievable Conservation Potential and 2022-2023 Biennial Conservation Target, Subject to Conditions*, Docket UE-210830, Accepting 2020-2029 Achievable Conservation Potential and 2022-2023 Biennial Conservation Target, Subject to Conditions at 5-7, (January 18, 2022).

<sup>2</sup> 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.

## **Background**

The Energy Independence Act (EIA)<sup>3</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>4</sup> 2023 marks the second half of the 2022-2023 biennium, and as such, electric utilities are held accountable for the achievement of their biennial targets at the conclusion of 2023. On May 31, 2024, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp 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 fix some errors found in Staff’s draft report review.

In July 2021, to address extenuating circumstances, subsection 1(e) of RCW 19.285.040 was added,<sup>6</sup> allowing 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>7</sup>

As stated in Commission Staff (Staff) comments on electric biennial conservation reports, 2022-2023 were difficult years for conservation achievement.<sup>8</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.

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<sup>3</sup> RCW 19.285.040.

<sup>4</sup> WAC 480-109-100(3).

<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> RCW 19.285.040(1)(e).

<sup>7</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.”

<sup>8</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 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).

Table 1 summarizes PacifiCorp’s electric conservation target achievements as outlined in the Company’s biennial and annual conservation reports.

**Table 1: 2022-2023 Electric Conservation Targets and Achievements (MWh)<sup>9</sup>**

A	Total Conservation Goal	98,921
B	Decoupling Penalty Threshold <sup>36</sup>	4,711
C	Total Conservation Achievement	86,961
D	% of Total Conservation Goal Achieved (C/A X 100%)	88%
E	EIA Target	94,210
F	EIA Penalty Threshold	87,436
G	EIA Penalty Threshold plus Decoupling	92,147
H	Excess Savings Applied	0
I	EIA Penalty-Liable Achievement	80,523
J	% of EIA Penalty Threshold Achieved (I/F X 100%)	92%

Company penalties for failing to meet EIA are established RCW 19.285.060(1), as outlined below.

RCW 19.285.060(1): “Except as provided in subsection (2) of this section, a qualifying utility that fails to comply with the energy conservation or renewable energy targets established in RCW shall **pay an administrative penalty to the state of Washington** in the amount of fifty dollars for each megawatt-hour of shortfall. Beginning in 2007, this penalty shall be adjusted annually according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.”

Company penalties for failing to meet decoupling targets are pursuant to Order 12 in Docket UE-152253 which goes into further detail regarding decoupling triggers, rate adjustment caps, and decoupling conditions.<sup>10</sup> Within this Order language, the Commission approved PacifiCorp’s decoupling mechanism subject to Staff conditions including, “[f]ailure to meet this incremental

<sup>9</sup> *In re PacifiCorp d/b/a Pac. Power & Light Co Revised 2022-2023 Biennial Conservation Report*, Docket UE-210830, PacifiCorp’s Revised 2022-2023 Biennial Conservation Report at 04 (June 21, 2024).

<sup>10</sup> *See Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Docket UE-152252, Order 12 at 43-50 (filed September 1, 2016).

conservation requirement shall be subject to the same financial penalties as apply under [RCW 19.285.060].”<sup>11</sup>

## Discussion

PacifiCorp did not achieve its EIA or decoupling targets. PacifiCorp 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, as well as identifying a shortfall in its Annual Conservation Plan filed in November of 2022.<sup>12</sup> However, Staff does not find that PacifiCorp has provided enough justification to avoid penalties, as explained in more detail below.

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>13</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 PacifiCorp to ameliorate<sup>14</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>15</sup>

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<sup>11</sup> *Id.* at 49. The specific Order language references RCW 19.285.030. Commission Staff has reviewed RCW 19.285.030, which outlines specific definitions for the Energy Independence Act, and finds that it does not include references to financial penalties. Staff believes that Order 12 was intended to reference RCW 19.285.060, which outlines accountability and enforcement for the Energy Independence Act. Staff will therefore be referring to RCW 19.285.060 regarding penalties for failing to achieve decoupling goals.

<sup>12</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 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-210830, 210830-PAC-2023-Annual-Conservation-Plan-11-15-2022 at 11, (November 15, 2022).

<sup>13</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>14</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>15</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 2022-2023 Biennial Conservation Report*, Docket UE-210830, Staff Comments, p. 22-24 (July 24, 2024).

The Company used several adaptive management strategies unique to this biennium to increase incentives, expand online loan application offerings, focus on vendor support and small business outreach/participation in Named Communities, and increase application-specific targeted outreach among other actions. The table below reflects programs for 2022-2023 and their various targets and achievements.

**Table 2: Programs from 2022-2023 Forecasted Costs and Savings vs Actual Costs and Savings<sup>16</sup>**

<b>Programs</b>	<b>Forecasted Costs</b>	<b>Actual Costs</b>	<b>Forecasted Savings (MWh)</b>	<b>Actual Savings (MWh)</b>	<b>Staff Notes</b>
<b>Home Energy Savings</b>	\$14,940,282	\$9,817,710	13,211	7,619	Spent less and achieved less than forecasted.
<b>Home Energy Reports</b>	\$835,426	\$573,094	7,658	8,757	Spent less and achieved more than forecasted.
<b>Wattsmart Business</b>	\$23,795,903	\$19,224,894	75,958	63,048	Spent less and achieved less than forecasted.
<b>NEEA</b>	\$1,739,538	\$1,860,480	6,743	6,744	Spent more and achieved slightly more than forecasted.

As noted in the Company’s 2023 Annual Conservation Report, a few programs were either canceled or failed to attract enrollment in 2023. Including a distribution efficiency project that was terminated due to concerns about overload.<sup>17</sup> There was some success regarding the online bill financing pilot program, with over 204 loan applications processed, amounting to \$3.1 million in financing. However, the CTA-2045 enabled heat pump pilot faced challenges during the biennium due to limited market-ready options and logistical issues with demand response management through ports. As a result, this pilot has been discontinued.<sup>18</sup>

<sup>16</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 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-210830, PacifiCorp’s Revised 2022-2023 Biennial Conservation Report at 12, (June 21, 2024).*

<sup>17</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 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-210830, PacifiCorp’s Revised Annual Conservation Report at 21, (June 21, 2024).*

<sup>18</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285.040 and WAC*

To determine whether the COVID-19 pandemic (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 pandemic to attempt to ameliorate its adverse effects, as outlined in Staff Comments. Table 3 shows that the Company experienced an upward trend in conservation achievement throughout the last two biennia reflecting its steps to ameliorate the pandemic, which ultimately did not result in full amelioration.

**Table 3: Comparison of Targets by Year 2020-2023 during COVID-19 (MWh)<sup>19</sup>**

	2020 <sup>20</sup>	2021 <sup>21</sup>	2022 <sup>22</sup>	2023 <sup>23</sup>
Target	36,514	37,700	48,840	48,287
Achieved	37,182	24,866	34,528	45,995
Percent achieved	102%	66%	71%	95%

PacifiCorp fell short of its conservation goals relating to its EIA and decoupling targets. Staff has specific recommendations regarding each of these penalties.

#### *Penalties for Failing to Achieve EIA Goals*

Similar to the last biennium stated in Background, PacifiCorp did face challenges connected to the pandemic. While Staff acknowledges that these issues have affected PacifiCorp 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 that they knew there would be challenges in December of 2021.<sup>24</sup> Additionally, seven projects were delayed or canceled in 2023, which were

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480-109-010, Docket UE-210830, PacifiCorp's Revised 2023 Annual Conservation Report at 25, (June 21, 2024).

<sup>19</sup> All numbers reported have been rounded up to the nearest MWh.

<sup>20</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co.'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-190908, PacifiCorp's Revised 2020-2021 Biennial Conservation Report at 11, (June 21, 2022).

<sup>21</sup> *See id.*

<sup>22</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 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-210830, PacifiCorp's Revised 2022-2023 Biennial Conservation Report at 11, (June 21, 2024).

<sup>23</sup> *See id.*

<sup>24</sup> *In the matter of PacifiCorp d/b/a Pac. Power & Light Co. 2022-2023 Biennial Conservation Report*, Docket UE-210830, 210830-PAC\_Appendix-4-5-31-24, at 1, (May 31, 2024).

not tied directly to the pandemic, totaling 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."<sup>25</sup>

Due to PacifiCorp only achieving 80,523 MWh out of the 87,436 MWh EIA penalty threshold, it is subject to penalties under RCW 19.285.060(1).

Staff calculated the final penalty for PacifiCorp by multiplying \$72.72<sup>26</sup> by the MWh deficit of 6,913, to arrive at **\$502,713.36**.<sup>27</sup>

<sup>25</sup> *In the Matter of PacifiCorp d/b/a Pac. Power & Light Co. 2020-2029 Ten-Year Achievable Electric Conservation Potential and 2022-2023 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Dockets UE-210830 and 210820-PAC-Revised-ARpt-2023-Conservation-Acqysutuib-6-21-24.pdf at 20, (June 21, 2024).

<sup>26</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). 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, which results in \$72.72 up from \$50, is as follows:

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

<sup>27</sup> Penalty Calculation for EIA (\$72.72 \* 6,913= **\$502,713.36**)

### *Penalties for Failing to Achieve Decoupling Goals*

According to Commission Order 1 in Docket UE-210830, PacifiCorp's Two-Year Decoupling Penalty Threshold for 2022-2023 is 4,711 MWh.<sup>28</sup>

Due to PacifiCorp meeting 0 out of the 4,711 MWh decoupling requirement, they are subject to penalties under RCW 19.285.060(1), as described above for the EIA penalties.

With this calculation in mind, PacifiCorp's penalty for failing to achieve the decoupling target is **\$342,583.92**.<sup>29</sup>

Additionally, since Order 12 in Docket 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. Therefore, Staff is recommending that PacifiCorp be penalized for failing to achieve its EIA and decoupling goals. The combined fine for failing to achieve each of these goals is **\$845,297.28**.<sup>30</sup>

### **Conclusion**

In summary, while Staff sympathizes with the challenges faced by PacifiCorp and commends its adaptive management, the Company did not meet its electric targets and should therefore be penalized. While the Company claims that the lingering effect of the pandemic qualifies the Company for exemption from penalties, for the reasons described above, Staff does not believe the statute aligns with this interpretation. Staff recommends the Commission issue a fine of **\$502,713.36** for PacifiCorp's failure to meet EIA targets. Staff also recommends issuing a fine of **\$342,583.92** for failing to meet its decoupling threshold, totaling **\$845,297.28** in penalties.

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<sup>28</sup> *In the Matter of PacifiCorp d/b/a/ Pac. Power & Light Co. 2022-2023 Biennial Conservation Report*, Docket UE-210830, Order 01 Accepting 2020-2029 Ten-Year Achievable Conservation Potential and 2022-2023 Biennial Conservation Target, Subject to Conditions, at 6 (January 18, 2022).

<sup>29</sup> Penalty Calculation for Decoupling (4,711 \* \$72.72 = \$342,583.92).

<sup>30</sup> \$502,713.36 + \$342,583.92 = **\$845,297.28**.