

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

DOCKETS UE-191024,
UE-190750, UE-190929,
UE-190981, UE-180778
(*Consolidated*)

COMMISSION STAFF MOTION TO
COMPEL DISCOVERY

I. INTRODUCTION

1 Staff of the Washington Utilities and Transportation Commission (Commission)
submits this Motion to Compel Discovery pursuant to WAC 480-07-425(1)(b).

II. RELIEF REQUESTED

2 Commission Staff (Staff) respectfully requests that the Commission compel Pacific
Power & Light Company (“Pacific Power” or “Company”) to immediately produce any and
all documents responsive to Staff Data Request Number 223 (DR 223), which requests: (1)
the confidential versions of the testimony and any exhibits of Oregon Public Utility
Commission (OPUC) witness Moya Enright in OPUC Docket No. UE 356; and (2) any and
all unredacted versions of the OPUC’s decision in Docket No. UE 356.

III. STATEMENT OF FACTS

3 On December 13, 2019, Pacific Power filed with the Commission revisions to its
currently effective tariff, WN U-75 for Electric Service, which was docketed as UE-191024.
With its filing, Pacific Power seeks to increase rates and charges for electric service
provided to customers in the state of Washington.

4 On January 9, 2020, the Commission entered Order 01 in this Docket, suspending Pacific Power’s tariff revisions and setting this matter for adjudication based on the Commission’s need to investigate, pursuant to RCW 80.04.130, whether the proposed tariff revisions are in the public interest (*i.e.*, whether they are fair, just, reasonable, and sufficient).¹ The Commission further ordered that “[d]iscovery will be conducted pursuant to the Commission’s discovery rules in WAC 480-07-400 – 425.”²

5 On January 13, 2020, the Commission entered Order 02 in this Docket, entering a protective order pursuant to RCW 34.05.446 to govern the discovery and use of confidential documents in this proceeding.³

6 On January 31, 2020, the Commission convened a prehearing conference of the parties and potential intervenors before Administrative Law Judge (ALJ) Andrew J. O’Connell.⁴

7 ALJ O’Connell entered Order 03 resulting from the prehearing conference on February 3, 2020. That order provided that the Commission’s discovery rules, including the provisions allowing data requests (DRs), would apply.⁵

8 On April 3, 2020, Staff served on Pacific Power DR 223. Through DR 223, Staff asked Pacific Power to:

Please provide the confidential versions of the testimony and any exhibits of Oregon Public Utility Commission witness Moya Enright in Docket No. UE 356. If available, please also provide the Oregon PUC’s decision in Docket No. UE 356. If there is confidential information in the order, please provide the confidential version.

¹ *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Dkt. UE-191024, Order 01, at 1-2, ¶ 4 (Jan. 9, 2020).

² *Id.* at 3, ¶ 18.

³ Subsequently, on February 20, 2020, the Commission entered a highly confidential protective order. To Staff’s knowledge, only confidential information (and not highly confidential information) is at issue.

⁴ *See Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Dkt. UE-191024, Notice of Prehearing Conference (Jan. 15, 2020).

⁵ *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Dkt. UE-191024, UE-190750, UE-190929, UE-190981, UE-180778 (*consolidated*), Order 03/01/06, at 4, ¶¶ 17-18 (Feb. 3, 2020).

9 On April 17, 2020, Pacific Power timely responded to DR 223 but refused to provide the requested documents, objecting as follows:

PacifiCorp objects to this request on the grounds that the information sought is outside the scope of this proceeding and that this request is not reasonably calculated to lead to admissible evidence. Without waiving these objections, the company responds as follows:

Public versions of testimony, exhibits, and the Oregon Public Utility Commission (OPUC) order is available on the OPUC website at the following link:

<https://apps.puc.state.or.us/edockets/DocketNoLayout.asp?DocketID=21842>

10 On April 22, 2020, counsel for Staff and Pacific Power held a telephone conference in an effort to informally resolve the discovery dispute regarding Pacific Power’s refusal to produce documents within its possession, custody, or control, in response to DR 223.⁶ On the call, Pacific Power’s counsel offered to provide Staff with the raw data inputs the Company submitted to the OPUC, but Pacific Power would not produce the confidential versions of the testimony and exhibits of OPUC witness Moya Enright in Docket No. UE 356, nor the unredacted versions of the OPUC’s decision in Docket No. UE 356.⁷

11 Staff and Pacific Power have been unable to resolve their differences.

IV. STATEMENT OF ISSUES

12 Should the Commission compel Pacific Power to produce documents in response to DR 223?

V. EVIDENCE RELIED UPON

13 Staff relies on the documents on file with the Commission in these consolidated dockets, as well as the declaration of Daniel J. Teimouri.

⁶ Decl. of Daniel J. Teimouri (“Teimouri Decl.”) at ¶ 4.

⁷ *Id.* at ¶ 5.

VI. ARGUMENT

14 The Commission’s rules allow a party to discover evidence through the use of DRs
in certain types of proceedings. Those proceedings include cases involving a change in the
rate levels of an electric company or those in which the Commission, in its discretion,
determines that the discovery methods prescribed in WAC 480-07-400(1)(c)(iii) apply.⁸

15 A party may use DRs to ask another party to produce data,⁹ which the Commission
defines as “information of any type, in any form.”¹⁰

16 The discovery process generally proceeds without Commission supervision,¹¹ and
the Commission requires parties to make good faith efforts to resolve discovery disputes
before bringing such a dispute to its attention.¹² Where these good faith efforts fail,
however, a party may move the Commission to compel discovery.¹³

17 The Commission’s discovery rules, which allow parties to use DRs, apply in this
case by virtue of the nature of Pacific Power’s filing, which involves a revision to the rates
and charges for electric service provided to customers in the state of Washington, and by the
explicit terms of ALJ O’Connell’s prehearing conference order. Staff therefore had the right
to request the production of documents as requested in DR 223.

18 The documents requested by DR 223 are within the scope of the Commission’s
discovery rules and within the scope of the case Pacific Power filed, and Pacific Power’s
objection concerning relevance is unfounded. WAC 480-07-400, concerning the scope of
discovery, provides that a party may seek through discovery any information or documents

⁸ WAC 480-07-400(2)(b)(i), (iv).

⁹ WAC 480-07-400(1)(c)(iii).

¹⁰ WAC 480-07-400(1)(c)(ii).

¹¹ WAC 480-07-405(2)(a) (parties serve DRs directly on the party from whom data is requested); WAC 480-07-405(2)(c) (parties may only file DRs with the Commission in appropriate circumstances); WAC 480-07-405(2)(b) (responses only become part of the record when admitted as evidence).

¹² WAC 480-07-425(1).

¹³ WAC 480-07-425(1).

“that may lead to the production of information that is relevant.”¹⁴ “A party may not object to discovery on grounds that the information sought will be inadmissible at the hearing, if that information appears reasonably calculated to lead to discovery of admissible evidence.”¹⁵ Under this standard, the testimony and exhibits of OPUC power cost witness Moya Enright, and the unredacted versions of the OPUC’s decision in Docket No. 356 are squarely within the scope of discovery in this proceeding.

19 Because Oregon also is within Pacific Power’s service territory, the analysis and resolution of power cost issues in Oregon, involving the same resources and the same methodologies included in Pacific Power’s Washington case, are directly relevant. Specifically, DR 223 requests OPUC Staff’s modeling analysis with respect to the EIM benefits. Pacific Power included testimony on these issues in its filing in the instant case.¹⁶ OPUC witness Enright’s analysis may be highly pertinent to the power cost issues in this case and of significant interest to not only the parties to the case but also to the Commission. Furthermore, the Commission’s discovery rules place the burden on “[a] party objecting to a data request [to] state the objection *and explain the basis for the objection.*”¹⁷ Pacific Power’s April 17, 2020, objections and responses made no effort to explain *how* DR 223 was outside the scope of this proceeding or was not reasonably calculated to lead to admissible evidence.

20 Pacific Power may respond that the analysis in Oregon does not fit the case in Washington and therefore the OPUC documents are not relevant. It is not the Company’s role, however, to decide which materials should be within the scope of Staff’s analysis and

¹⁴ WAC 480-07-400(3).

¹⁵ *Id.*

¹⁶ *See, e.g.,* MGW-1CT at 52:7–54:6.

¹⁷ WAC 480-07-405(6)(a) (emphasis added).

whether Staff can adequately evaluate those materials. Staff is capable of appreciating the differences in different cases and can seek any necessary clarification through discovery.

21 Additionally, any concerns raised by the Company concerning the confidentiality of documents requested by DR 223 are a red herring. It is Staff's understanding that the confidential information referenced in the requested documents is Pacific Power's confidential information and not that of any other party to the Oregon case.¹⁸ There is a protective order in the instant docket governing the discovery and use of confidential documents in this proceeding pursuant to RCW 34.05.446. The Commission is experienced in handling confidential information and is well-equipped to protect Pacific Power's confidential information. Indeed, Pacific Power has already submitted confidential material in response to data requests in this very proceeding. Regardless, the documents sought by DR 223 are within Pacific Power's possession, custody, or control, and any right to confidentiality therein would be the Company's to waive.

22 Further, Pacific Power does not appear to object to providing the information on the basis of its confidential designation because the Company has offered to provide the raw data to Staff. What PacifiCorp does not want to provide are the complete, unredacted documents themselves, which contain analysis. The discovery rules exist to facilitate the exchange of relevant data among the parties, including and especially documents. The documents produced by OPUC, and believed to be in the possession of Pacific Power, are relevant to Staff's audit of the Company's rates and within the scope of the proceeding as discussed above.

¹⁸ Teimouri Decl. at ¶ 6.

23 Staff attempted, in good faith, to informally resolve this discovery dispute. Counsel for Staff has corresponded with Pacific Power’s attorney in an effort to eliminate the need for Commission involvement in this dispute. Unfortunately, Staff and Pacific Power could not resolve their differences.

24 The Commission should compel Pacific Power to comply with its discovery obligations and immediately produce: (1) the confidential versions of the testimony and any exhibits of OPUC witness Moya Enright in OPUC Docket No. UE 356; and (2) any and all unredacted versions of the OPUC’s decision in Docket No. UE 356. Staff has an obligation to provide the Commission with a complete and impartial analysis of tariff filings, like the one at issue in this matter. Without the documents requested in DR 223, Staff’s ability to comprehensively evaluate Pacific Power’s proposed tariff revisions will be impeded. Staff appreciates that there are many demands on Pacific Power’s employees and resources. But the Company’s failure to comply with its discovery obligations thwarts Staff’s ability to fulfill its duty to the Commission. Pacific Power should not be allowed to withhold documents that may inform Staff’s analysis of the Company’s case simply because the Company does not wish to produce them.

VII. CONCLUSION

25 Staff has a right to the documents it requested in DR 223. For the reasons stated above, Staff respectfully requests that the Commission compel Pacific Power to immediately

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produce any and all documents responsive to DR 223, as is required of it under Washington law and the Commission's discovery rules.

DATED this 11th day of May 2020.

Respectfully submitted,

/s/ Daniel J. Teimouri, WSBA No. 47965
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