

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFICORP, d/b/a PACIFIC POWER  
& LIGHT COMPANY,

Respondent.

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

ORDER 06/04/09

GRANTING MOTION TO COMPEL

**BACKGROUND**

- 1 On December 13, 2019, PacifiCorp, d/b/a Pacific Power & Light Company, (PacifiCorp or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective tariff, WN U-75 for Electric Service in Docket UE-191024. On January 9, 2020, the Commission entered Order 01 in Docket UE-191024, suspending operation of the tariff revisions and setting this matter for adjudication.
- 2 On September 13, 2018, PacifiCorp filed a petition for an accounting order in Docket UE-180778, requesting the Commission enter an order authorizing a change in depreciation rates applicable to the Company's depreciable electric plant. The Commission suspended that petition and set it for adjudication.
- 3 On September 6, 2019, PacifiCorp filed a petition for an order approving deferred accounting in Docket UE-190750 related to repowering the Leaning Juniper wind facility.
- 4 On November 8, 2019, PacifiCorp filed a petition for deferral of costs related to purchases of renewable energy credits in Docket UE-190929.

- 5      On November 22, 2019, PacifiCorp filed a petition for an order approving deferred accounting in Docket UE-190981 related to repowering the Marengo I, II, and Goodnoe Hills wind facilities.
- 6      On February 3, 2020, the Commission entered Order 03/01/06 in Dockets UE-191024, UE-190750, UE-190929, UE-190981, and UE-180778, consolidating the dockets in response to an unopposed motion by Commission staff (Staff) and establishing a procedural schedule.
- 7      On May 11, 2020, Commission staff (Staff) filed a motion to compel discovery from PacifiCorp (Motion) related to Staff’s Data Request 223, which seeks confidential versions of Order 19-351 issued by the Oregon Public Utility Commission (OPUC) in OPUC Docket UE 356 on October 19, 2019, and testimony filed in that same proceeding by OPUC witness Enright on June 10, 2019. The requested information pertains, in part, to Energy Imbalance Market (EIM) benefits, repowered wind capacity, and energy market transactions.
- 8      Staff and the Company met informally, but were unable to resolve their discovery dispute.
- 9      Pursuant to WAC 480-07-425(1)(b), the presiding administrative law judge convened a telephonic discovery conference with the parties on May 12, 2020, to resolve the discovery dispute and rule on Staff’s Motion. At that discovery conference, both Staff and PacifiCorp made concessions and clarified their positions, which narrowed the focus of the dispute. PacifiCorp agreed to provide the confidential information in OPUC Order 19-351 regarding agreed EIM benefit forecasts for 2020 and repowered wind capacity, as well as all Company-originating confidential information referenced in Enright’s testimony. Staff narrowed its request to only the confidential information identified in Issues 1 and 4 of Enright’s testimony, in addition to what PacifiCorp agreed to provide. At the conclusion of the discovery conference, the only issue that remained in dispute is whether PacifiCorp must provide information from Enright’s testimony regarding Enright’s own analysis that was marked as confidential because it was derived from Company-originating confidential information.

## DISCUSSION

- 10      We grant Staff’s motion to compel discovery from PacifiCorp and, in addition to the information the Company already agreed to provide from the OPUC’s Order 19-351 and

Enright's testimony, direct the Company to provide unredacted versions of Issues 1 and 4 of Enright's testimony. If any information in Enright's testimony contains confidential information, the Company may mark it as confidential or highly-confidential, as appropriate, pursuant to the protective order issued in these proceedings.

- 11 We also resolve two disputed points. The first is whether the designation of certain information in Enright's testimony as confidential should prevent it from being compelled. PacifiCorp argues that it should not be compelled to disclose third-party generated analysis and information marked as confidential in a proceeding from another jurisdiction. In this instance, the information is marked confidential because it was derived from Company-originated confidential information. Without the Company's original designation of confidentiality, the derived information and analysis would not subsequently have been marked confidential. Importantly, the confidential designation protects PacifiCorp's interest in the information, not that of a third-party. As such, PacifiCorp's interest in the confidentiality of the information is adequately protected by the protective order issued in these proceedings. We determine, therefore, that there is no basis on which PacifiCorp may withhold disclosure of the information that Staff requests.
- 12 The second issue is whether the request is reasonably calculated to lead to the discovery of admissible evidence.<sup>1</sup> PacifiCorp argues that Staff's request fails to meet this standard because, at least in part, the analysis conducted by the OPUC staff is fundamentally different than any analysis Staff might conduct because Washington is treated differently than the other five states served by PacifiCorp as a result of prior Commission orders and the West Control Area (WCA) cost allocation methodology. We decline to set such a narrow standard for discovery or prevent Staff from exploring positions that may justify examination of the WCA cost allocation methodology. The information requested pertains to PacifiCorp's operations with the EIM and PacifiCorp's energy market transactions, both of which are also at issue in Washington. We interpret the Commission's discovery rules broadly to facilitate the exchange of information relevant to proceedings. While a party must be limited to requesting information that is reasonably calculated to lead to admissible evidence, we determine that Staff's request meets that standard. Accordingly, we conclude that Staff's request, as modified and explained by Staff during the discovery conference held on May 12, 2020, should be granted.

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<sup>1</sup> See WAC 480-07-400(3).

**ORDER**

13 **THE COMMISSION ORDERS that** Commission staff's motion to compel is GRANTED as explained in this order.

DATED at Olympia, Washington, and effective May 15, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Andrew J. O'Connell*

ANDREW J. O'CONNELL

Administrative Law Judge

**NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to *WAC 480-07-810*.**