

**Docket Nos. UE-191024, UE-190750, UE-190929, UE-190981 and UE-180778 - Vol. III**

**WUTC v. PacifiCorp d/b/a Pacific Power & Light Company**

**May 12, 2020**



**206.287.9066 | 800.846.6989**

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

[www.buellrealtime.com](http://www.buellrealtime.com)

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, )  
)   
Complainant, ) DOCKET NOS.  
) UE-191024, UE-190750,  
-v- ) UE-190929, UE-190981,  
) and UE-180778  
PACIFICORP d/b/a PACIFIC )  
POWER & LIGHT COMPANY, )  
)   
Respondent. )

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DISCOVERY CONFERENCE  
VOLUME III  
(Pages 36-72)

Taken in Olympia, Washington  
(ALL PARTICIPANTS APPEARING VIA VIDEOCONFERENCE)

BEFORE: ADMINISTRATIVE LAW JUDGE ANDREW O'CONNELL

DATE TAKEN: May 12, 2020  
REPORTED BY: Nancy M. Kottenstette, RPR, CCR 3377

1 APPEARANCES

2 FOR THE COMPLAINANT:

3 Jennifer Cameron-Rulkowski, Esq.  
4 Daniel J. Teimouri, Esq.  
5 ATTORNEY GENERAL OF WASHINGTON  
6 P.O. Box 40128  
7 Olympia, WA 98504  
8 360.664.1183  
9 jennifer.cameron-rulkowski@utc.wa.gov  
10 dan.teimouri@utc.wa.gov

11 FOR THE RESPONDENT:

12 Ajay Kumar, Esq.  
13 PACIFICORP  
14 825 Multnomah Street  
15 Suite 200  
16 Portland, OR 97232  
17 503.813.5585  
18 ajay.kumar@pacificorp.com

19 Katherine McDowell, Esq.  
20 MCDOWELL RACKNER & GIBSON  
21 419 SW 11th Avenue  
22 Suite 400  
23 Portland, OR 97205  
24 503.595.3924  
25 katherine@mcd-law.com

FOR PUBLIC COUNSEL:

17 Nina M. Suetake, Esq.  
18 Ann Paisner, Esq.  
19 OFFICE OF THE ATTORNEY GENERAL  
20 Public Counsel Unit  
21 800 Fifth Avenue  
22 Suite 2000  
23 Seattle, WA 98104  
24 206.389.2055  
25 nina.suetake@atg.wa.gov  
ann.paisner@atg.wa.gov

1 FOR PACKAGING CORPORATION OF AMERICA:

2 Curt R. Ledford, Esq.  
3 DAVISON VAN CLEVE  
4 1750 SW Harbor Way  
5 Suite 450  
6 Portland, OR 97201  
7 503.241.7242  
8 crl@dvclaw.com

9 FOR THE ENERGY PROJECT:

10 Simon J. ffitch, Esq.  
11 LAW OFFICE OF SIMON J. FFITCH  
12 321 High School Road NE  
13 Suite D3  
14 Bainbridge Island, WA 98110  
15 206.669.8197  
16 simon@ffitchlaw.com

17 FOR WALMART, INC.:

18 Vicki M. Baldwin, Esq.  
19 PARSON BEHLE & LATIMER  
20 201 South Main Street  
21 Suite 1800  
22 Salt Lake City, UT 84111  
23 801.532.1234  
24 vbaldwin@parsonsbehle.com

25

INDEX OF EXHIBITS

(No exhibits marked.)

1 OLYMPIA, WASHINGTON; May 12, 2020

2 3:34 p.m.

3  
4 JUDGE O'CONNELL: Let's be on the  
5 record. Thank you. Good afternoon. My name is  
6 Andrew O'Connell. I am an administrative law judge  
7 with the Washington Utilities and Transportation  
8 Commission. This is a discovery conference for  
9 Consolidated Dockets UE-191024, UE-190750, UE-190929,  
10 UE-190981, and UE-180778.

11 The Commission received yesterday, May 11, a  
12 motion from Commission Staff to compel discovery from  
13 PacifiCorp, and we are here to discuss that motion. I  
14 am undecided at the end of this whether I will be  
15 issuing an oral ruling or whether I will issue a  
16 written order with a ruling.

17 First, I'm going to ask to hear from Staff  
18 briefly as to its motion, and then I'd like to hear  
19 from PacifiCorp. I then have some questions for both  
20 Staff and PacifiCorp, and I hope that we might be able  
21 to resolve the disagreement if there continues to be  
22 one during this discussion.

23 So before we get started, for the record,  
24 let's take short appearances. For the Company, for  
25 PacifiCorp?

1 MR. KUMAR: Thank you, Your Honor.  
2 This is Ajay Kumar appearing on behalf of PacifiCorp,  
3 and I believe Katherine McDowell is also in the  
4 hearing as well.

5 JUDGE O'CONNELL: And for Commission  
6 Staff?

7 MR. TEIMOURI: Good afternoon, Your  
8 Honor. This is Daniel Teimouri, assistant attorney  
9 general on behalf of Commission Staff.

10 MS. CAMERON-RULKOWSKI: And this is  
11 Jennifer Cameron-Rulkowski, assistant attorney general  
12 also on behalf of Staff.

13 JUDGE O'CONNELL: And for Public  
14 Counsel?

15 MS. SUETAKE: This is Nina Suetake,  
16 assistant attorney general for Public Counsel.

17 MS. PAISNER: This is Ann Paisner,  
18 assistant attorney general for Public Counsel.

19 JUDGE O'CONNELL: I'm sorry. I almost  
20 cut you off, Ms. Paisner. I apologize.

21 Packaging Corporation of America?

22 MR. LEDFORD: Good afternoon, Your  
23 Honor. Curt Ledford for PCA.

24 JUDGE O'CONNELL: For Walmart?

25 MS. BALDWIN: Thank you. This is Vicki

1 Baldwin appearing on behalf of Walmart.

2 JUDGE O'CONNELL: And do I have a  
3 representative from The Energy Project?

4 MR. FFITCH: Yes, good afternoon, Your  
5 Honor. This is Simon Ffitch appearing for The Energy  
6 Project.

7 JUDGE O'CONNELL: Thank you,  
8 Mr. Ffitch.

9 Okay. I would like to first briefly hear from  
10 Staff about its motion, and I want to make sure I  
11 understand what it is seeking from its discovery  
12 request. Should I address questions here from  
13 Mr. Teimouri or from Ms. Cameron-Rulkowski?

14 MS. CAMERON-RULKOWSKI: Your Honor,  
15 this is Jennifer Cameron-Rulkowski. I'll start and  
16 then I'll have Mr. Teimouri add anything.

17 Our motion is very simple. We are requesting  
18 documents, and the Company has objected to providing  
19 the documents. The documents are relevant to  
20 testimony that the -- that the Company has filed in  
21 this case. And so, essentially, we would like to  
22 receive the documents that we've requested, and that  
23 is -- it's relatively simple.

24 JUDGE O'CONNELL: Okay. So the  
25 documents from the motion I think you're seeking are

1 Moya Enright's testimony filed June 10, 2019, in an  
2 Oregon case?

3 MS. CAMERON-RULKOWSKI: We're seeking  
4 the confidential version of her testimony and also  
5 seeking the confidential version or versions of the  
6 Oregon Commissions Order.

7 JUDGE O'CONNELL: Okay. Yes, that's  
8 Order 19-351 entered October 19, 2019; is that  
9 correct?

10 MS. CAMERON-RULKOWSKI: Your Honor --

11 MR. TEIMOURI: Subject to check, Your  
12 Honor, I believe so, but we will confirm.

13 JUDGE O'CONNELL: I've reviewed the  
14 testimony and exhibits that were offered in that case,  
15 the public versions of it as well as the public  
16 version of the Order 19-31 -- 351. I noticed in the  
17 Oregon Commissions Order that the only redactions are  
18 in the settlement of the order, and there was two  
19 redactions. One of them was to EIM benefit forecast  
20 for 2020 on page 9 of 45, and the second is for  
21 repowered wind capacity on page 25 of 45.

22 And I'm assuming those pertain to the  
23 information you are seeking. And my question about  
24 Moya Enright's testimony is whether you're seeking  
25 just the EIM benefit forecast section redactions or



1 other sections as well?

2 MS. CAMERON-RULKOWSKI: So my  
3 understanding, Your Honor, is we're seeking the EIM  
4 benefits section, but what we would like to receive is  
5 a complete copy of the document that we requested.

6 JUDGE O'CONNELL: Okay. Well, let  
7 me -- let me come back to Staff. I'd like to hear  
8 from PacifiCorp. If you could, please respond to what  
9 Staff is seeking and also explain your objection for  
10 not providing it.

11 MR. KUMAR: Yes. Thank you, Your  
12 Honor. I appreciate the opportunity to sort of  
13 provide our concerns.

14 I think I might start off by sort of walking  
15 you through the documents and the information in those  
16 documents, and I'll start off with regards to the  
17 order and the settlement agreement.

18 As you correctly note, the order does not  
19 contain any confidential information. In fact, the  
20 confidential information that is contained in the  
21 order is in the appendix which contains the settlement  
22 agreement which is between the parties and  
23 PacifiCorp's -- I'm going to refer to as PacifiCorp's  
24 TAM, which is our annual forecast power cost  
25 proceeding in Oregon.

1           The specific information that you referred to  
2 is the EIM benefits. That information is the  
3 information that is referenced in Oregon Staff  
4 witness's Enright's testimony. That information and  
5 the settlement of those issues was a black box  
6 settlement where the parties agreed to a number. That  
7 number is the confidential number that's contained in  
8 that settlement document.

9           The wind capacity factors are also marked as  
10 confidential, but -- and I'm going to -- a little bit  
11 subject to check here because it's kind of short  
12 notice and I was just talking to one of our experts  
13 about this. But I believe we have already provided  
14 those wind capacity factors in Washington to parties  
15 through either in the direct filing or through  
16 discovery. And it's not -- we have no objection to  
17 providing those.

18           And also with regards to the settlement  
19 documents, I think I will be able to offer right now I  
20 think we can provide an unredacted version to Staff of  
21 the settlement -- just the settlement document that  
22 has those EIM benefits numbers redacted. Of course,  
23 any analysis or discussion of how those numbers were  
24 arrived at, since it was a black box settlement in  
25 Oregon, would be covered under as part of confidential

1 settlement discussions.

2           And I think, next, I'll turn to Staff witness  
3 Moya Enright's testimony. And I think I'd like to,  
4 first, clarify, I think, some of the statement of  
5 facts that were made in Staff's motion to compel.  
6 With regards to Staff's motion to compel, PacifiCorp,  
7 in an effort to resolve this discovery dispute, did  
8 not just offer the raw input data. We offered a  
9 version of Moya Enright's testimony that had  
10 PacifiCorp's numbers unredacted.

11           So Staff witness Moya Enright's testimony and  
12 Oregon Staff Moya Enright's testimony contains sort of  
13 two sets of what we would -- what I would like to  
14 describe as two sets of numbers. There are numbers  
15 that are directly from PacifiCorp and numbers that are  
16 based off of Staff's calculations. And PacifiCorp has  
17 offered to provide, essentially, the numbers that are  
18 based off of -- that are directly from PacifiCorp.

19           And sort of the logic behind that is, first of  
20 all, the Oregon Staff is not a party to our Washington  
21 GRC. Those numbers and the viability and voracity of  
22 those numbers are just -- there's no one in this  
23 proceeding that could testify to that. And so we feel  
24 that it doesn't meet the Commission's test of being  
25 reasonably calculated to lead to discoverable -- to

1 admissible evidence because it's simply based on --  
2 it's Staff's -- it's an independent third-party's  
3 calculation that is sort of not in -- that third party  
4 is not in this proceeding. There is no ability to  
5 examine the third party or view those documents.

6           Additionally, it may be helpful to provide  
7 some additional context around how net power costs are  
8 calculated through PacifiCorp's system. With regards  
9 to Washington, Washington is the one state in  
10 PacifiCorp's system that does not use the 2017  
11 protocol or its successor, the 2020 protocol. This  
12 means that Washington actually has an entirely  
13 different set of resources that are used to served --  
14 I want to be careful here because I'm not entirely --  
15 it has an entirely different set of resources that are  
16 used for rate making purposes to calculate Washington  
17 net power costs.

18           Oregon is a signatory to the 2017 protocol,  
19 which governs the PacifiCorp's Oregon TAM, and as a  
20 result, the PacifiCorp's Oregon power costs include  
21 all those resources. And so that cost allocation of  
22 all those resources includes, essentially, a number of  
23 thermal resources that are in Utah, Wyoming, and Idaho  
24 that are simply not included in Washington.

25           And this is relevant because if you have

1 reviewed Moya Enright's testimony, what is redacted is  
2 mostly her -- is Staff's calculations. And those  
3 numbers are based off of a completely different cost  
4 allocation protocol. And so, again, you know,  
5 PacifiCorp feels that these -- this request is not  
6 reasonably calculated to lead to admissible evidence  
7 because it relies on a completely different cost  
8 allocation protocol than Oregon.

9 And, finally, I'd like to address some of the  
10 concerns about confidentiality, and I think Staff's  
11 motion refers to this as a red herring. And our  
12 concern is not with the ability to protect  
13 confidential information, but, rather, it's about the  
14 weight of a protective order in another jurisdiction.  
15 This is -- Staff witness Enright's calculations are  
16 covered under a protective order in front of the  
17 Oregon Commission. And so PacifiCorp has serious  
18 concerns about providing information from a third  
19 party, third-party calculations, that are covered  
20 under a protective order in Oregon.

21 So -- and, conversely, it could also weigh on  
22 how other commissions view Washington's protective  
23 order. I think those are, in a nutshell, sort of  
24 PacifiCorp's concerns around providing a full,  
25 responsive, unredacted version of Staff witness

1 Enright's testimony.

2 JUDGE O'CONNELL: Thank you, Mr. Kumar.

3 I want to ask Staff a question about its  
4 response to the Company's explanation of  
5 confidentiality. But before I get there, I want to  
6 make sure, Mr. Kumar, I understand the difference  
7 between the data that you're -- that the Company is  
8 already willing to provide from Moya Enright's  
9 testimony and the part that it's not. So do you have  
10 a copy of Moya Enright's testimony with you so that I  
11 can use an example?

12 MR. KUMAR: Yes, Your Honor. I believe  
13 I have a version of the public testimony in front of  
14 me, but it may take me a little bit longer.

15 MS. CAMERON-RULKOWSKI: And, Your  
16 Honor, this is Jennifer Cameron-Rulkowski. I would  
17 like an opportunity to reply to the Company's  
18 comments, if I may.

19 JUDGE O'CONNELL: Yes. I'm going to  
20 give that to you. I want to ask some clarifying  
21 questions first to make sure I understand and so that  
22 everyone else understands what PacifiCorp is saying  
23 it's already willing to provide so that we don't  
24 miscommunicate going forward in these discussions.

25 So, Mr. Kumar, if you could, please turn to

1 page 9, Enright 9.

2 MR. KUMAR: I apologize, Your Honor.  
3 My computer is being a little bit slow. If you give  
4 me a few seconds, I can get there.

5 JUDGE O'CONNELL: I'm sorry. I meant  
6 Enright 6.

7 MR. KUMAR: I'm there, Your Honor.

8 JUDGE O'CONNELL: So on line 11 that  
9 begins a redaction, and it reads: Staff is concerned  
10 to see a proposed blank reduction in EIM benefits.

11 I'm assuming that this is the Company's  
12 proposed reduction, whatever -- whatever amount it  
13 was, reduction to EIM benefits in the 2020 TAM?  
14 I'm -- am I correct in my assumption that that is the  
15 type of information that is coming from PacifiCorp  
16 that you are communicating that you're willing to  
17 disclose that sort of information?

18 MR. KUMAR: Subject to specific check  
19 on that piece of information, I think that's correct,  
20 Your Honor.

21 JUDGE O'CONNELL: Because I see  
22 several, and I would say that I see several instances  
23 throughout this testimony where the information seems  
24 to be of the kind that comes directly from the  
25 Company, but I do see also numbers referenced -- are

1 being derived from company -- I'm assuming being  
2 derived from company data that are also marked as  
3 confidential. And it's those derived numbers that  
4 you're saying -- those are the ones that you object to  
5 being shared?

6 MR. KUMAR: That's correct, Your Honor.

7 JUDGE O'CONNELL: Okay.

8 Ms. Cameron-Rulkowski, if you would, please, go ahead  
9 and respond.

10 MS. CAMERON-RULKOWSKI: Thank you, Your  
11 Honor. So, again, I want to make it very clear that  
12 we are asking in the discovery request for a document,  
13 and I believe that the Company -- that the basis of  
14 the Company's objection is an objection that one would  
15 make to the admissibility of a document in a  
16 proceeding.

17 And we are at the stage in this proceeding of  
18 discovery, which is a much broader standard, and so  
19 what the Company is objecting to really is having this  
20 information come into the record, but that is not  
21 where we are at this point. Staff is completing its  
22 investigation and its audit of the Company and is  
23 seeking information to complete its analysis, not  
24 necessarily to dump into the record.

25 And Staff is entitled to obtain relevant



1 documents from the Company. In my mind, it's a fairly  
2 low burden. We have testimony from the Oregon staff  
3 analyzing EIM benefits, and the Washington staff, our  
4 staff, is doing its analysis of the Company's  
5 testimony on EIM benefits.

6 The -- the latest allocations -- so the  
7 allocation methodology has changed, and it's not so  
8 certain what Mr. Kumar was saying that it's -- that  
9 the two systems -- that the Oregon testimony is  
10 completely irrelevant, but what we're not looking for  
11 necessarily is the data, because that the Company has  
12 offered to provide. Staff is doing its analysis now  
13 and would like the benefit of other analysis. So this  
14 is very much like any third party analysis in a  
15 document that the Company has -- happens to have in  
16 its possession.

17 The other issue here is that the calculations  
18 are not the Oregon Staff's confidential information.  
19 The information that the calculations are based on is  
20 confidential because it's the Company's confidential  
21 information, and the Company can release it. There's  
22 no -- protective orders exist to protect the  
23 confidential information of entities, usually the  
24 utility. And in this case it would be absurd for the  
25 utility to say that they can't release information

1 because it's confidential and it's their own  
2 information.

3 We have a protective order here in Washington  
4 in this case, and that will protect confidential and  
5 highly confidential information. And there is no  
6 reason that the Company cannot provide -- provide the  
7 information that we've asked for that is -- that is  
8 confidential.

9 And another thing is that our protective  
10 orders provide for the eventual -- for the eventual  
11 compelling of information in other jurisdictions. I  
12 don't know that the Oregon order does, but the  
13 important thing is that the information is protected.  
14 Again, that is the purpose of the protective orders.  
15 The information will be protected.

16 And that's -- I'll just go back once again.  
17 This is a document with analysis that's relevant to  
18 the case. We're not at the stage where we're asking  
19 for it to be admitted to the record. Staff is --  
20 needs it to complete its investigation.

21 Mr. Teimouri, do you have anything to add?

22 MR. TEIMOURI: Just one thing. I think  
23 I would note that the Company did not object on the  
24 basis of confidentiality to raise those concerns now.  
25 We raised it in our pleading just to raise the issue

1 because it was confidential information, but they did  
2 not object on that basis.

3 JUDGE O'CONNELL: Okay. I have a  
4 couple questions for each that I hope will either help  
5 us lead to an agreement between the two parties or  
6 will at least help me understand the ruling that I  
7 need to make.

8 First off, I -- I agree with Staff that  
9 discovery is not limited to information that would be  
10 admissible at the hearing. And I would say that the  
11 testimony provided by Moya Enright would not be  
12 admissible because no witness for Staff or any witness  
13 in this proceeding could testify to having personal  
14 knowledge of where it came from.

15 But my question for Staff is: The information  
16 you seek in discovery still has to be reasonably  
17 calculated to lead to discovery of admissible  
18 evidence. So when I look at this and I look at the  
19 testimony and I look at the settlement agreement --  
20 well, let's take out the settlement agreement because  
21 PacifiCorp has already agreed to provide the  
22 redacted -- the redacted information.

23 When I look at the testimony that you're  
24 requesting, I have to look at it and think what is the  
25 admissible evidence that you're seeking or that could

1 be discovered from this, and that leads me down the  
2 path of having to think about what are the redactions  
3 and what -- what information is redacted that you  
4 would be getting. And so I'm curious what -- what is  
5 the admissible evidence that you think you're going to  
6 get from this testimony?

7 MS. CAMERON-RULKOWSKI: So, Your Honor,  
8 the -- what we're seeking is the analysis that has  
9 been performed. So we're looking at methodology, and  
10 then Staff may well have questions based on its review  
11 of that testimony about methodology for the Company.  
12 And so I think we contemplate that it will either  
13 be -- we haven't seen it, so we contemplate that it  
14 will be something that will be interesting for Staff  
15 and will lead them down another path of inquiry,  
16 including additional discovery, or it will be -- it  
17 will be a methodology that says, oh, well, that's  
18 interesting, but that's not useful to us. We simply  
19 don't know because we haven't been able to review it.

20 JUDGE O'CONNELL: Okay. Well, you're  
21 asking for the testimony and exhibits, and they don't  
22 have any redactions in them. But the testimony has  
23 several redactions, and I think when you read the  
24 redacted versions of the testimony, it's pretty clear  
25 what the analysis is. It's critical of whatever was

1 provided and the estimates provided by PacifiCorp in  
2 its initial filing.

3 And what is lacking in the redacted version of  
4 that testimony is the exact numbers provided by  
5 PacifiCorp and then the recommendations by Oregon  
6 Staff as to how those estimates should be correct. So  
7 the analysis that you call it really is just the  
8 numbers of -- and the trend figures that is presented  
9 in the testimony, correct, not additional analysis?

10 MS. CAMERON-RULKOWSKI: Your Honor, I  
11 don't have it in front of me.

12 As I've explained before and as we've  
13 discussed with Staff witnesses, this is -- in terms of  
14 leading to -- in terms of leading to admissible  
15 evidence, this is a step along the path of Staff's  
16 investigation. And if it leads to more questions,  
17 then Staff will be propounding additional discovery.  
18 So we think that it may indeed ultimately lead to  
19 admissible evidence, but we don't know because we  
20 haven't seen it.

21 JUDGE O'CONNELL: Okay. Well, from  
22 Moya Enright's testimony, I'm pulling the first  
23 redaction as an example. It's on -- it's -- the  
24 redaction concerns the Company's proposed reduction in  
25 the EIM benefits for -- in their 2020 TAM.

1 Does Staff already have the Company's  
2 estimates for the EIM benefits in 2020, and does it  
3 have the Company's 2020 TAM and the 2019 TAM?

4 MS. CAMERON-RULKOWSKI: Your Honor, I'm  
5 going to consult Staff in just a minute, but I would  
6 just caution that we -- that Staff has been very clear  
7 that they're not interested in the raw numbers.  
8 They're really interested in the analysis. So one  
9 moment, please.

10 JUDGE O'CONNELL: Let me come back to  
11 Staff so that we can use this time efficiently.

12 Mr. Kumar, I want to ask you a couple of  
13 questions. The protective order in Oregon, I've  
14 reviewed the highly protective order, another  
15 protective order in the Oregon case.

16 MR. KUMAR: Sorry. Your Honor, you  
17 broke up a little bit there, but I think I understood  
18 your question as to be how the protective orders work  
19 in our Oregon TAM. And it may be helpful. I  
20 understand your confusion.

21 The modified protective order, which includes  
22 what we would consider highly protective information,  
23 has to be filed every year that there is highly  
24 protected information; however, the standard  
25 protective order, which is Order 16128, is filed -- I

1 don't remember the exact year it was filed. I  
2 think -- it would have been filed in 2016 in Docket  
3 Number UE-307. And it's a rolling protective order  
4 that continues each year because the TAM is an annual  
5 proceeding that is filed every year. Does that answer  
6 your question?

7 JUDGE O'CONNELL: Yes, it does. Thank  
8 you.

9 So the protective orders, they protect against  
10 unauthorized disclosure of PacifiCorp's confidential  
11 information. So I see it as the Company can choose to  
12 disclose its confidential information, and we have a  
13 protective order in place in this case to protect any  
14 of the Company's confidential information. Is that  
15 sufficient to protect authorized disclosure of these  
16 numbers?

17 MR. KUMAR: And I want to be careful  
18 here. We feel that that protective order we have in  
19 Washington is sufficient to protect PacifiCorp's  
20 numbers, and I will additionally offer that, you know,  
21 to the extent that Staff would request for our direct  
22 filing in the Oregon TAM, we would provide that under  
23 the protective order in Washington or to the extent  
24 they request PacifiCorp to file rebuttal testimony on  
25 these issues in the Oregon TAM, we would provide that

1 subject to, I think, in our rebuttal testimony there  
2 are two locations whether we refer to Staff's numbers.  
3 Those would remain redacted.

4 And I would note that this issue resulted --  
5 was not -- EIM benefits was settled at a number in the  
6 last TAM, and so there is additional testimony that  
7 PacifiCorp provided this year in its direct filing on  
8 EIM benefits that we would provide under Washington's  
9 protective order if Staff were to request it.

10 JUDGE O'CONNELL: The derived numbers,  
11 the analysis in Moya Enright's testimony, it's  
12 confidential information because it's derived from  
13 information that's marked as confidential by  
14 PacifiCorp. And am I correct in assuming that that  
15 information that's derived from your confidential  
16 information is also yours or it's protected by your  
17 designation of confidential information?

18 MR. KUMAR: I think that would be a  
19 correct statement, Your Honor. PacifiCorp always  
20 tries to protect its forecast projections for EIM  
21 benefits.

22 JUDGE O'CONNELL:  
23 Ms. Cameron-Rulkowski, are you back from  
24 speaking with your client?

25 MS. CAMERON-RULKOWSKI: Yes, Your



1 Honor, in part. I think what I will do at this point  
2 is I will ask Staff, Ms. Elaine Jordan, to respond,  
3 and you had -- you had asked -- what I think you were  
4 asking was essentially whether -- whether certain data  
5 could be provided that would be less than the full  
6 testimony. And that is not sufficient for Staff's  
7 purposes, and I would ask Ms. Jordan at this point to  
8 explain.

9 Ms. Jordan, are you online?

10 MS. JORDAN: Yes. This is Elaine  
11 Jordan. Can you hear me?

12 MS. CAMERON-RULKOWSKI: Yes,  
13 Ms. Jordan, I can hear you.

14 MS. JORDAN: I am having some network  
15 connectivity issues. If I drop off, I will call back  
16 in on a different phone number.

17 So to answer your question, Judge O'Connell,  
18 the -- I don't -- getting the Company's -- I'm sorry.  
19 Hold on. Let me back up for a second. I'm sorry.

20 Judge O'Connell, can you please repeat what  
21 your question was?

22 JUDGE O'CONNELL: The Company has  
23 explained that it will provide the numbers and the  
24 other confidential information that came from the  
25 Company. It is objecting to providing the information

1 that has been redacted that comes from Oregon Staff's  
2 analysis, and I think an example of that is on page 12  
3 of Enright's testimony where, for example, Enright  
4 testifies that Staff recommends a forecast of blank in  
5 GHG revenue for the 2020 TAM.

6 So that's an Oregon Staff recommendation.  
7 That is confidential or marked as confidential because  
8 it is derived from or based upon confidential  
9 information provided by the Company.

10 And my question is: Why does Staff need that  
11 or believe that that will lead to admissible evidence  
12 in this proceeding?

13 MS. JORDAN: Thank you for that. I,  
14 Staff, believe that this will lead to admissible  
15 evidence because the -- this is the first time that  
16 the Company has filed a general rate case to include  
17 the EIM benefits and GHG revenue in the power cost  
18 baseline.

19 Because this is the first time the Company has  
20 filed this in Washington, Staff went -- the Company  
21 operates in six states, and so Staff went to other  
22 states to see how this issue has been dealt with and  
23 see what other analysis has been done.

24 There's only one other company in Washington  
25 that participates in the EIM; however, they handle the

1 EIM benefits differently than what the Company is  
2 proposing. So because this is new to Washington, we  
3 were looking to other people that have done this type  
4 of analysis or done similar type of analysis to help  
5 us craft our position in this case.

6 MS. CAMERON-RULKOWSKI: Thank you,  
7 Ms. Jordan. If you have anything to add, go ahead.  
8 But, otherwise, in terms of -- does that answer your  
9 question, Judge O'Connell?

10 JUDGE O'CONNELL: One moment.

11 Ms. Jordan, if you're still on the line, are  
12 you interested in more sections of Ms. Enright's  
13 testimony than the first section that deals with the  
14 EIM forecast and benefits? Are you also interested in  
15 the redactions from wholesale transactions and  
16 hedging, economic cycling, the day-ahead realtime  
17 adjustment?

18 MS. JORDAN: I would also be interested  
19 in Section -- Issue 4, the day-ahead realtime  
20 adjustment part of Ms. Enright's testimony. But I'm  
21 only interested in those two sections. I'm not  
22 interested in any other confidential sections in their  
23 testimony.

24 JUDGE O'CONNELL: Okay. Okay. I want  
25 to point this out to make a point to both parties,

1 because I want to express that I'm not exactly pleased  
2 that Staff and the Company couldn't have worked this  
3 out without having to ask the Commissioner to resolve  
4 this.

5 I'm looking at Section 4 of Enright's  
6 testimony, page 27, and it's discussing daily market  
7 prices from June 2018. And it says that Figure 7,  
8 which is redacted, shows a real example of sales  
9 trades carried out by PacifiCorp in June 2018  
10 comparing five daily market prices with five-day  
11 average price.

12 Now, Figure 7 is -- presents that, but the  
13 data from June 2018 is likely -- I'm assuming from  
14 this presentation that the market price data from  
15 June 2018 is confidential information that PacifiCorp  
16 would designate as confidential as well as the  
17 five-day average price, and that's what's being  
18 compared here.

19 That seems like information that could be  
20 requested and given without having to have this  
21 document -- an unredacted version of this document  
22 almost like this document presents the answers in  
23 someone's homework, and Staff wants to see the answers  
24 instead of just the -- the work to lead up to the  
25 answers.

1           So I see a lot of examples of Staff could get  
2 to this information based upon data given by the  
3 Company. Now, for the Company, though, I look at  
4 this, and I think Staff could definitely ask a data  
5 request for every single line in here that is redacted  
6 asking for, for example, June 2018 daily market price  
7 data in order to conduct the same analysis that the  
8 Oregon Staff conducted.

9           And it would probably involve giving a lot of  
10 data and looking through a lot of the Company's  
11 records where what Staff wants is merely what's  
12 presented here in this document and less burdensome on  
13 the Company and on Staff to give an unredacted version  
14 of this confidential information.

15           So give me one moment. So for Staff I want to  
16 know if you have already received through data  
17 requests and data responses the information or the  
18 bulk data that you would need if you were to recreate  
19 the analysis done by Oregon Staff or if you haven't  
20 asked for it -- and when I ask that, what I'm asking  
21 for is: Have you asked for 2018 daily market price  
22 data from the Company? And that's an example. It's  
23 not -- I understand that there are more things that  
24 are redacted that you're seeking, but as an example.

25                           MS. CAMERON-RULKOWSKI: Are you,

1 asking, Your Honor, if -- we haven't asked for that  
2 because what we were really looking for was the  
3 package, and the Company did offer to provide raw  
4 data. I think that's clear, but that wasn't  
5 interesting. What we wanted to do was put together  
6 the data with the conclusions and see what the path --  
7 what the decision path was.

8 JUDGE O'CONNELL: Okay. I think this  
9 goes back to perhaps something Ms. Jordan said. How  
10 is Oregon's Staff conclusions based on that data in a  
11 case in Oregon relevant for Staff's evaluation for how  
12 it relates to Washington customers?

13 MS. CAMERON-RULKOWSKI: Again, Your  
14 Honor, it goes to methodology, and that's what we're  
15 looking at. This is part of Staff's normal -- or one  
16 of -- one of the parts of Staff's normal analysis as  
17 researchers and analysts. They look at different  
18 methodologies and then determine what the best way is  
19 to pursue the analysis for Washington and to look  
20 at -- as Ms. Jordan mentioned, Staff will look at any  
21 number of different methodologies in other  
22 jurisdictions as well.

23 JUDGE O'CONNELL: Okay. Thank you.

24 Mr. Kumar, the protective order in Oregon, if  
25 the Company is to disclose the unredacted version of

1 Moya Enright's testimony, does it see that as being in  
2 violation of the protective order in Oregon?

3 MR. KUMAR: Your Honor, I think this  
4 might be a little more complex. Let me explain my  
5 answer. If the -- based on my reading of the  
6 protective order, it does not speak sort of directly  
7 to this issue. The Company's position is that if we  
8 are ordered by the Commission to produce this  
9 information, we would produce it, and we would not be  
10 violating the protective order in Oregon. But --

11 JUDGE O'CONNELL: And, Mr. Kumar, if  
12 you did have to produce this, would you mark those  
13 sections as confidential when you produced them in  
14 this proceeding?

15 MR. KUMAR: Yes.

16 JUDGE O'CONNELL: Sorry to interrupt  
17 you. Go ahead.

18 MR. KUMAR: Yes, Your Honor. If we  
19 were to produce, essentially, the unredacted version,  
20 the unredacted pages would be marked as confidential.

21 JUDGE O'CONNELL: Okay. I'm -- I'm not  
22 ready to make a ruling at this moment, but I am going  
23 to issue an order within the next couple days and  
24 certainly before the end of the week. I'd like to ask  
25 Staff and the Company any last thoughts or remarks you

1 would like to leave me with? And let's start with  
2 Staff since it is your motion.

3 MS. CAMERON-RULKOWSKI: Thank you, Your  
4 Honor. I think the -- what is important to us and one  
5 of the reasons that we brought this motion is that  
6 when there is material out there that appears to be  
7 relevant to a case and it's in a document, then --  
8 then Staff is entitled to receive that document  
9 through discovery.

10 And this document that we're asking for is  
11 really no different from any document that might be in  
12 the Company's possession that contains analysis. It's  
13 relevant to the topic, and it may lead, once Staff has  
14 studied it, to further inquiry and, ultimately, the  
15 production of admissible evidence. And it's very,  
16 very important that Staff be able to access documents  
17 through the discovery process to be able to complete  
18 its analysis. And this is important in this case and  
19 in every case going forward.

20 Thank you, Your Honor.

21 JUDGE O'CONNELL: One last question for  
22 Staff. I'm curious how Staff would feel in -- let's  
23 say, for example, PacifiCorp, since it is a  
24 multi-jurisdictional company, if in Oregon, the Oregon  
25 Staff wanted to review the confidential testimony and



1 exhibits submitted by the UTC's Staff in one of our  
2 proceedings, how would it view that?

3 MS. CAMERON-RULKOWSKI: So, Your Honor,  
4 if the information were not confidential, I believe  
5 Staff would simply attach the document and e-mail it  
6 off to Oregon Commission Staff. The staffs of the  
7 public service commissions tend to be quite collegial.

8 In this case that's obviously not possible  
9 because it is confidential. The confidential material  
10 belongs to the Company, and so if there were to be a  
11 request like this, then it would be -- again, it would  
12 be up to the Company because it's the Company's  
13 information to either defend that if, for some reason,  
14 they didn't think it could be protected in the other  
15 jurisdiction and our protective orders do provide  
16 that -- that -- for the possibility -- do conceive of  
17 the possibility that confidential information might be  
18 compelled in other jurisdictions.

19 JUDGE O'CONNELL: So you would agree  
20 that -- I want to make sure I understand what you're  
21 saying. Commission Staff's derived -- analysis  
22 derived from confidential information presented in a  
23 case in Washington, that testimony and exhibits that's  
24 confidential, could be, you would think, disclosed by  
25 the Company to Oregon Staff in an Oregon case in

1 response to a data request in Oregon; correct?

2 MS. CAMERON-RULKOWSKI: Yes, if the  
3 underlying -- if the underlying confidential  
4 information belongs to the Company. And as I  
5 mentioned, the protective order specifically provides  
6 for this information to be released in other  
7 jurisdictions under certain circumstances, such as  
8 being compelled.

9 JUDGE O'CONNELL: Thank you.  
10 Mr. Kumar.

11 MR. KUMAR: Thank you, Your Honor.  
12 I --

13 JUDGE O'CONNELL: I apologize. I  
14 apologize. I was inviting you to give your last  
15 thoughts. And I apologize for interrupting you, and  
16 it makes it a little difficult, it being telephonic.  
17 Thank you for your patience. Go ahead.

18 MR. KUMAR: Thank you, Your Honor. And  
19 I also appreciate you taking the time to review Oregon  
20 Staff's testimony and the documents beforehand. I  
21 think that really helped sort of provide context for  
22 the argument that I was making.

23 I think that you correctly identified the  
24 issues here, and, you know, Staff -- it's pretty clear  
25 that Staff is -- PacifiCorp is more than willing to

1 provide the underlying data and any version of Staff  
2 witness -- Oregon Staff witness's Enright's testimony  
3 that is unredacted for PacifiCorp's information.  
4 However, you know, as a multi-jurisdictional utility,  
5 PacifiCorp operates in six states.

6 And so when we talk about calculations that  
7 are from a third party in another proceeding in  
8 another state, it -- it presents significant  
9 complexities for PacifiCorp to be able to provide that  
10 information, and that is the real concern here. And I  
11 think that -- you know, the correct test here is  
12 whether or not Staff's request is reasonably  
13 calculated to lead to admissible evidence.

14 And I think from PacifiCorp's view, this would  
15 be inadmissible evidence, and so the analysis is all  
16 there. PacifiCorp is more than happy to provide its  
17 data and its information and even its filings that use  
18 PacifiCorp's numbers in this proceeding. However,  
19 it's specifically Oregon Staff's derived calculations  
20 that cause us trouble, and so I think you correctly  
21 identified those issues. And we thank you for your  
22 time today.

23 JUDGE O'CONNELL: Okay.  
24 Ms. Cameron-Rulkowski, it's your motion. I want to  
25 give you the last word. Is there anything that you

1 failed to cover that you need to?

2 MS. CAMERON-RULKOWSKI: Thank you, Your  
3 Honor. Very quickly, the standard is will lead to  
4 admissible evidence. We're not claiming that what  
5 we're seeking is admissible.

6 And, again, the -- the information that we're  
7 seeking that's marked as confidential belongs to the  
8 Company. They can choose to disclose it or not. It's  
9 not proprietary information of the Oregon Commission  
10 Staff. It's -- the confidential nature of it is  
11 because the Company marked information as confidential  
12 in that case.

13 Thank you very much, Your Honor.

14 JUDGE O'CONNELL: Okay. With that, I  
15 think we've covered everything. As I said, I will  
16 issue an order with a decision within the next couple  
17 days, but in any case it will be issued before the end  
18 of the week. I understand the nature of the timing  
19 with discovery.

20 Is there anything else that we should address  
21 before we sign off from anyone?

22 Okay. I'm hearing silence, which to me means  
23 there is nothing. So this is a last chance for  
24 anyone.

25 MS. SUETAKE: Your Honor, this is Nina

1 Suetake from Public Counsel. I just wanted to say we  
2 support and agree with Staff's argument on this issue.

3 JUDGE O'CONNELL: Okay. Thank you.

4 MS. CAMERON-RULKOWSKI: This is  
5 Jennifer Cameron-Rulkowski. I just want to thank you  
6 for addressing this speedily. That is much  
7 appreciated.

8 JUDGE O'CONNELL: You're welcome.

9 Okay. With that we will be -- we will bring  
10 this conference to a close, so we'll be off the  
11 record. Thank you all.

12 (The proceedings concluded at  
13 4:28 p.m.)

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STATE OF WASHINGTON  
COUNTY OF KING

I, Nancy M. Kottenstette, a Certified  
Shorthand Reporter in and for the State of Washington,  
do hereby certify that the foregoing transcript of the  
proceedings on May 12, 2020, is true and accurate to  
the best of my knowledge, skill, and ability.

I do further certify that I am a disinterested  
person in this cause of action; that I am not a  
relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my  
hand and seal this 27th day of May, 2020.

Nancy M. Kottenstette  
Nancy M. Kottenstette, RPR, CC

