

**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**



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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

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

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INDEX OF EXHIBITS

(No exhibits marked.)

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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?

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<p>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</p>	<p>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</p>
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<p>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</p>	<p>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.</p>

<p style="text-align: right;">Page 44</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 46</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>25 And this is relevant because if you have</p>
<p style="text-align: right;">Page 45</p> <p>1 settlement discussions.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">Page 47</p> <p>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.</p> <p>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.</p> <p>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</p>

<p style="text-align: right;">Page 48</p> <p>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</p>	<p style="text-align: right;">Page 50</p> <p>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</p>
<p style="text-align: right;">Page 49</p> <p>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</p>	<p style="text-align: right;">Page 51</p> <p>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</p>

<p style="text-align: right;">Page 52</p> <p>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</p>	<p style="text-align: right;">Page 54</p> <p>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</p>
<p style="text-align: right;">Page 53</p> <p>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</p>	<p style="text-align: right;">Page 55</p> <p>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.</p>

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<p>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</p>	<p>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</p>
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<p>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</p>	<p>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</p>

<p style="text-align: right;">Page 60</p> <p>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</p>	<p style="text-align: right;">Page 62</p> <p>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.</p>
<p style="text-align: right;">Page 61</p> <p>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,</p>	<p style="text-align: right;">Page 63</p> <p>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,</p>



<p style="text-align: right;">Page 64</p> <p>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</p>	<p style="text-align: right;">Page 66</p> <p>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</p>
<p style="text-align: right;">Page 65</p> <p>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</p>	<p style="text-align: right;">Page 67</p> <p>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</p>

<p style="text-align: right;">Page 68</p> <p>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</p>	<p style="text-align: right;">Page 70</p> <p>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</p>
<p style="text-align: right;">Page 69</p> <p>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</p>	<p style="text-align: right;">Page 71</p> <p>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.) 14 * * * * * 15 16 17 18 19 20 21 22 23 24 25</p>

C E R T I F I C A T E

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, RPR,  3377

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