BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY, Respondent.	Docket No. UE-250224 PACIFICORP'S RESPONSE TO PUBLIC COUNSEL'S MOTION TO COMPEL DISCOVERY

1. In accordance with WAC 480-07-375(4), PacifiCorp dba Pacific Power & Light Company (PacifiCorp or Company) files this Response to Public Counsel's Motion to Compel Discovery (Motion). The Washington Utilities and Transportation Commission (Commission) should deny Public Counsel's Motion because the information requested by Public Counsel was produced by PacifiCorp as part of confidential settlement negotiations and allowing discovery is contrary to the Commission's rules and undermines important public policies protecting settlement discussions. The information is also irrelevant to the new allocation methodology (the 2026 Protocol) proposed in this Power Cost Only Rate Case (PCORC).[1]

I. Background

2. PacifiCorp recovers the costs of providing service through rates established in the six states in which it operates. To ensure states receive the appropriate allocation of costs and benefits from PacifiCorp's integrated system, PacifiCorp has used the collaborative

[1] PacifiCorp does not address the inflammatory accusations in Public Counsel's Motion made against the Company as the accusations are baseless and irrelevant to the substance of the Motion.

Multi-State Process (MSP) to address allocation issues. For over 35 years, this collaborative process has led to the development and adoption of a series of inter-jurisdictional cost-allocation methods.[2]

3. The most recent inter-jurisdictional cost-allocation method used by PacifiCorp is the 2020 Protocol, which also includes a state-specific Washington Inter-Jurisdictional Allocation Methodology (WIJAM). Washington parties to the 2020 Protocol included Staff and the Packaging Corporation of America (PCA). Public Counsel signed the WIJAM but not the 2020 Protocol. The Commission approved the 2020 Protocol and WIJAM in 2020.[3]

4. Although the 2020 Protocol resolved significant issues for a future allocation method, several issues remained unresolved (defined in the 2020 Protocol as the Framework Issues). For years, the parties to the 2020 Protocol—including Staff and PCA—engaged in settlement negotiations through the Framework Issues Workgroup to address the unresolved issues. Although PacifiCorp repeatedly requested that Public Counsel join the Framework Issues Workgroup to participate in the ongoing negotiations, Public Counsel declined.

5. Even though the Framework Issues Workgroup met for several years, it did not reach agreement on an extension of the 2020 Protocol or the terms of a replacement allocation methodology. Accordingly, in this PCORC, PacifiCorp filed the 2026 Protocol.

6. The present dispute involves a data request from Public Counsel that sought in part "any and all analysis that PacifiCorp did in consideration of alternatives" to the 2026

[2] Steward, Exh. JRS-1T at 7:21-8:4.
[3] *Wash. Utils. & Trans. Comm'n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket Nos. UE-191024 *et al.*, Final Order 09/07/12 (Dec. 14, 2020).

Protocol, specifically the reassignment of Chehalis, removal of Hermiston, and increasing the allocation of Rolling Hills. Through an initial response and two clarifying supplemental responses—which were prepared following two discovery conferences with Public Counsel—PacifiCorp explained that (1) analysis of alternative allocation methodologies was conducted for the Framework Issues Workgroup as part of confidential settlement negotiations; (2) the analysis was further subject to a Non-Disclosure Agreement (NDA), consistent with the confidential nature of the settlement discussions; and (3) the 2026 Protocol was developed without consideration of the alternative methodologies confidentially discussed in the Framework Issues Workgroup settlement discussions.[4]

II. Argument

A. The requested information was produced by PacifiCorp for confidential settlement negotiations and is non-discoverable.

7. The Commission "supports parties' informal efforts to resolve disputes without the need for contested hearings[,]" and its rules expressly state that "[i]nformation exchanged exclusively within the context of settlement negotiations will be treated as confidential and will be privileged against disclosure to the extent permitted by law[.]"[5] The alternatives analyses Public Counsel requests were prepared exclusively for discussion among participants in the Framework Issues Workgroup as part of the confidential settlement negotiations aimed at resolving future cost allocation issues. Therefore, the information requested by Public Counsel is "privileged against disclosure."[6]

[4] *See* Attachment A (PacifiCorp's 2nd Supplemental Response to Public Counsel) and Attachment B (June 18, 2025, Email from PacifiCorp to Public Counsel); *see also* Motion, Attachments A-C.
[5] WAC 480-07-700(6)(b).
[6] *Id.*

8. Public Counsel argues that the MSP is not "alternative dispute resolution within the meaning of the Commission" rules protecting confidential settlement negotiations.[7] To the contrary, the Commission's rules explain that "alternative dispute resolution includes *any* mechanism to resolve disagreements, in whole or in part, without contested hearings," including voluntary negotiations where parties "to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight."[8] Here, the confidential settlement discussions held by the Framework Issues Workgroup were intended explicitly to "resolve disagreements" on a matter "within the commission's jurisdiction" (*i.e.*, cost allocation) with the goal being to develop a methodology, like the WIJAM, that would be presented to the Commission for approval.[9] And PacifiCorp agrees with Public Counsel that the settlement negotiations "directly impact the rights of Washington ratepayers," which is why Staff and PCA participated and why PacifiCorp urged Public Counsel to do the same.[10] The fact Public Counsel declined to participate in those settlement negotiations does not grant Public Counsel the ability to now demand disclosure of the confidential settlement materials.[11]

9. The alternative analyses were not only protected from disclosure as confidential settlement information, but the analyses were also expressly provided subject to an NDA. Public Counsel argues the NDA only precludes the recipients of the information from

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[7] Motion at 5-6, ¶ 12.
[8] WAC 480-07-700 and 700(4)(a) (emphasis added).
[9] When approving the WIJAM, the Commission noted that there were "Framework Issues that are in need of negotiation and resolution . . . [and the] 2020 Protocol creates a framework for collaboration to resolve many cost allocation issues among PacifiCorp's service areas. It ultimately may develop additional proposals for cost allocation of PacifiCorp's system. PacifiCorp and the Parties are required to seek Commission approval to implement any future cost allocation methodologies developed through the 2020 Protocol[.]" Docket Nos. UE-191024 *et al.*, Final Order 09/07/12 at ¶ 105.
[10] Motion at 6, ¶ 12.
[11] WAC 480-07-400(3) (a "discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information the party seeks").

disclosure, not PacifiCorp.[12] Adopting Public Counsel's logic would create a self-defeating and all-encompassing exception to any NDA entered with PacifiCorp that would produce the absurd result where parties that participated in good faith in the Framework Issues Workgroup—like Staff and PCA—are barred from using information provided as part of that process while Public Counsel—*who declined to participate*—is not. The information provided in the Framework Issues Workgroup was disclosed *only* pursuant to the NDA—without that NDA the Company would not have disclosed this confidential information.

B. Allowing discovery of settlement negotiations undermines the foundation of the MSP.

10. For over 35 years, PacifiCorp and stakeholders have relied on a foundation of trust and collaboration to negotiate cost-allocation methodologies throughout the Company's multi-state service area. The integrity of that process relies on good faith settlement negotiations—like those held by the Framework Issues Workgroup—where PacifiCorp and stakeholders can have frank and open discussions regarding confidential, proprietary, and technically complicated issues. If Public Counsel were to prevail, it would raise alarming policy concerns for future cooperation among the six jurisdictions in which PacifiCorp operates. No party to a similar multi-state workgroup that works collaboratively to negotiate terms in the future would be assured that the proposals and analyses produced at the meeting would be protected; rather, all materials related to PacifiCorp's review and analyses of parties' proposals would be fair game in discovery. There is no doubt that this additional uncertainty would chill future negotiations and cooperation among multi-state parties.

[12] Motion at 5, ¶11.

11. Had Public Counsel wanted access to the analyses it now seeks through discovery, it could have participated in good faith in the Framework Issues Workgroup, like Staff and PCA.[13] Public Counsel should not be allowed to sit out those settlement discussions and then demand production of the settlement information through discovery. Such a result would not only stifle future MSP-related negotiations; it would chill all settlement negotiations in Washington.

C. The information requested is irrelevant to the 2026 Protocol.

12. Because the 2026 Protocol was not developed in consideration of the analyses provided in the Framework Issues Workgroup,[14] the requested material is not relevant and therefore not subject to discovery.[15] Public Counsel argues PacifiCorp conceded the relevance of the requested materials by not objecting on that basis.[16] In fact, during discussions with Public Counsel over the objections to its data request, PacifiCorp made clear that the requested materials did not form any basis for the 2026 Protocol and was therefore irrelevant.[17]

III. Conclusion

13. For the foregoing reasons, the Company respectfully asks that the Commission deny Public Counsel's Motion.

[13] WAC 480-07-400(3).
[14] *See* Steward, Exh. JRS-1T at 10:5-10.
[15] WAC 480-07-400(3).
[16] Motion at 5, ¶11.
[17] Attachment B, June 18, 2025, Email from PacifiCorp to Public Counsel.

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