BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP d/b/a PACIFIC POWER AND LIGHT CO., Respondent.	DOCKET UE-250224 PUBLIC COUNSEL'S ADDITIONAL BRIEFING IN SUPPORT OF MOTION TO COMPEL PACIFICORP'S ANSWERS TO DISCOVERY

I. INTRODUCTION

1. In response to the Washington Utilities and Transportation Commission's (Commission or UTC) directive, the Washington State Attorney General's Public Counsel Unit (Public Counsel) offers the following additional analysis as to whether PacifiCorp dba Pacific Power and Light Company's (PacifiCorp or the Company) Multistate Process (MSP) is a "settlement negotiation" within the meaning of WAC 480-07-700 or other law. PacifiCorp's contention that the MSP is a settlement negotiation fails for at least two reasons. First, the MSP is not "alternative dispute resolution" (ADR) within the meaning of Commission regulation. Second, the MSP is not a settlement negotiation under the law governing admissibility of compromise evidence. Accordingly, the Commission should grant Public Counsel's Motion to Compel and order an immediate response to Public Counsel's Data Request No. 2.

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II. ARGUMENT

A. The Multistate Process is not Settlement Negotiation within the Meaning of WAC 480-07-700.

2. PacifiCorp contends the MSP constitutes alternative dispute resolution within the meaning of WAC 480-07-700, which prohibits disclosure of information exchanged within the context of settlement negotiations. PacifiCorp's argument is plainly incorrect.

3. Courts interpret administrative rules according to the same principles used to interpret statutes.[1] "If an administrative rule or regulation is clear on its face, its meaning is to be derived from the plain language of the provision alone."[2] Administrative rules and regulations are interpreted as a whole, giving effect to all the language and harmonizing all provisions.[3]

4. The plain language of WAC 480-07-700 is clear on its face and undermines PacifiCorp's contentions. The Commission "supports the *parties'* informal efforts to resolve disputes without the need for *contested hearings*."[4] Under this language, the Washington Administrative Code only applies to Commission-litigated matters where there are "parties" attempting to avoid "contested hearings" in Commission-contested matters. Under basic definition, a "party" in a contested matter is a *litigant*.[5] The MSP is plainly not a contested matter before the Commission and does not have any litigant parties. The MSP is a policy discussion held by stakeholders across PacifiCorp's system meant to resolve the issues that arise in PacifiCorp's six-state system.

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[1] *Bayley Constr. v. Wash. State Dep't of Labor & Indus.*, 10 Wn. App. 2d 768, 789, 450 P.3d 647 (2019).
[2] *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 56, 50 P.3d 627 (2002).
[3] *Id.* at 57.
[4] WAC 480-07-700.
[5] *Party*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defense, or appeal from an adverse judgment.; litigant.").

Its outcomes do not bind any participants, as commissions across the six states can accept or reject the outcomes of the MSP on dockets before those commissions. In Washington, there is no UTC docket associated with the MSP where a contested hearing would occur. PacifiCorp's contention fails under the WAC's precatory language.

5. WAC 480-07-700(4) lists the forms of ADR contemplated by the regulation, all of which occur within Commission proceedings. Among the forms of ADR listed,[6] the most applicable to the MSP are "voluntary negotiation" and "Commission-directed negotiation." First, the regulation authorizes "voluntary negotiation" between "[p]arties to a dispute that is within the commission's jurisdiction[.]"[7] To the extent the MSP involves any disputes, it is not within the Commission's jurisdiction, because it does not occur under the Commission's oversight. "Commission-directed negotiations" are either settlement conferences under WAC 480-07-700(5) or collaboratives under WAC 480-07-720, which are created either by the Commission on its own initiative or in response to a petition, neither of which occurred here. For this additional reason, the MSP is not a settlement negotiation under the WAC.

6. PacifiCorp's position also fails under WAC 480-07-700(6)(c). Under that provision, "[p]articipants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement and must immediately advise the commission if that process is without substantial prospects of resolving the issue or issues under discussion." Here again, the broader WAC only applies to *commission-sanctioned* ADR. The MSP is not a commission-sanctioned ADR process. It is a

[6] WAC 480-07-700(4) is a non-exclusive list of ADR methods, including voluntary negotiation, Commission-directed negotiation, mediation, settlement conferences, and arbitration.
[7] WAC 480-07-700(4)(a).

multistate discussion among stakeholders. Indeed, none of the Washington parties have treated the MSP like a commission sanctioned ADR. Section 6(c) requires participants to advise nonparticipating parties of substantial progress toward settlement. Participants are obliged to notify the Commission if there are no substantial prospects resolving contested issues. PacifiCorp terminated the MSP early in 2024. Public Counsel has been unable to locate any evidence of PacifiCorp formally notifying the Commission of this fact.

7. In summary, as the MSP is not a settlement negotiation within the meaning of WAC 480-07-700 and the Commission should compel PacifiCorp to answer Public Counsel Data Request No. 2.

B. The Multistate Process is not a Settlement Negotiation Because it is not a Contested Matter under the Law.

8. The Commission can also look to other law and conclude the MSP is not a settlement negotiation. Although the Rules of Evidence do not bind the Commission,[8] the law concerning Rule 408 is instructive on this point. Under ER 408, "evidence of conduct or statements made in compromise negotiations is [not] admissible." The issue here is whether the MSP is a "compromise negotiation." Most cases addressing this issue occur in the federal courts interpreting a rule nearly identical to Washington's rule. Under these cases, the MSP is not a settlement negotiation.

9. First, Rule 408 only applies to compromise negotiations, not business communications.[9] ("A careful perusal of all the testimony relating to the communications convinces us that the

[8] RCW 34.05.452.
[9] *Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co.*, 561 F.2d 1365, 1373 (10th Cir. 1977).

court did not commit manifest error in ruling they were business communications and not compromise negotiations.") The MSP, which attempts to resolve issues of cost allocation among jurisdiction, is more akin to a business negotiation than a compromise negotiation. Further, to qualify as a compromise negotiation, there must be a "claim" that is disputed.[10] Although there may be disagreements as to cost allocation within the MSP, there are no disputed claims. Under this body of law, the MSP is not a settlement negotiation and PacifiCorp's analyses that occurred within the MSP are subject to discovery.

III. CONCLUSION

10. PacifiCorp's Multistate Process is not a settlement negotiation within the meaning of WAC 480-07-700 or other law. The Commission should compel PacifiCorp to respond to Public Counsel's Data Request No. 2. Given the rapidly approaching deadline for response testimony, the Commission should order PacifiCorp to respond within five days of its order granting Public Counsel's motion.

DATED this 15th day of July 2025.

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[10] *Deere & Co. v. Int'l Harvester Co.*, 710 F.2d 1551, 1557 (Fed. Cir. 1983); *Ecrix Corp. v. Exabyte Corp.*, 191 F.R.D. 611, 615 (D. Colo. 2000).