Service Date: July 17, 2025

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 ORDER 05 ORDER GRANTING MOTION TO COMPEL

BACKGROUND

1 On April 1, 2025, PacifiCorp d/b/a Pacific Power and Light Company (PacifiCorp or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective WN U-76 Tariff for electric service, as listed in Appendix A of Order 01 of this docket. PacifiCorp characterizes its filing as a power cost only rate case (PCORC). The Company filed this PCORC in accordance with Order 09 in Docket UE-230172, which required the Company to submit a PCORC to reset the baseline to remove coal-fired resources from rates. The Company's proposed revised tariff sheets provide an effective date of January 1, 2026. Further, as part of its filing PacifiCorp requests approval of a new allocation methodology to replace the Washington Interjurisdictional Allocation Methodology (WIJAM).

2 On April 1, 2025, PacifiCorp filed testimony and exhibits with the Commission. In its filing, PacifiCorp agrees to suspend the proposed tariff filing in compliance with Washington Administrative Code (WAC) 480-100-194.

3 On May 21, 2025, the Commission issued Order 02 Prehearing Conference Order and Notice of Hybrid Evidentiary Hearing (Order 02) and Order 03 Protective Order with Provisions Governing Highly Confidential Information (Order 03). Order 02, among other things, established a procedural schedule including a discovery deadline of September 22, 2025. Order 03 governs the discovery and use of information designated as confidential or highly confidential in this proceeding.

4 On June 23, 2025, Public Counsel filed with the Commission a Motion to Compel PacifiCorp Answers to Discovery (Motion to Compel). The Motion to Compel requests that the Commission enter an order to compel PacifiCorp to provide a complete response to Public Counsel Informal Data Request No. 2 (DR 2) by providing its analyses of alternatives to its proposed allocation methodology, complete with workpapers and supporting data. According to Public Counsel's Motion to Compel, PacifiCorp contends this information is protected by a non-disclosure agreement it provided to MSP participants and by the Commission's ADR rules.

5 On June 25, 2025, the Commission served notice on the parties to this proceeding allowing for responses to Public Counsel's Motion to Compel, setting June 30, 2025, as the deadline to submit any responses.

6 On June 30, 2025, the Alliance of Western Energy Consumers (AWEC) filed a response in support of Public Counsel's Motion to Compel. On the same day, PacifiCorp responded in opposition to the Motion to Compel, arguing that (1) DR 2 sought information protected by a Non-Disclosure Agreement (NDA), (2) the information sought was not relevant to PacifiCorp's allocation methodology proposal, and (3) the information sought could not be disclosed because it was produced as part of settlement discussions.[1]

7 On July 2, 2025, the Commission held a hearing on Public Counsel's Motion to Compel, before presiding Administrative Law Judges Connor Thompson and Bijan Hughes. In attendance were representatives from Public Counsel, PacifiCorp, Staff, AWEC, and The Energy Project (TEP). During the hearing Staff, AWEC, and TEP expressed their opinion that Public Counsel's Motion to Compel should be granted. During the hearing, the Commission made oral rulings that the NDA did not protect the documents sought from disclosure and that the information sought by Public Counsel was relevant to the issue of cost allocation.[2] On PacifiCorp's third argument - that the documents sought by Public Counsel were non-disclosable pursuant to WAC 480-07-700(6)(b) – the Commission asked the parties to provide additional briefing before 5:00 p.m. on July 15, 2025.[3]

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[1] PacifiCorp's Response, at ¶ 6 (Jun. 30, 2025).

[2] Tr. Vol. II at 35:8-14. The NDA was drafted by PacifiCorp to protect information that PacifiCorp deemed confidential and was signed by parties participating in the Multi-State Process. *See*, Tr. Vol. II at 15:18 – 16:7. Further, the information sought is argued to be the only alternative analyses that exist to the newly proposed allocation methodology. *See*, Tr. Vol. II at 32:8 – 33:8.

[3] Tr. Vol. II at 43:9-24.

8 On July 15, 2025, Public Counsel and AWEC submitted additional briefing addressing the applicability – or lack thereof – of WAC 480-07-700(6)(b) as an authority to prevent disclosure of the information subject to DR 2.

9 On July 15, 2025, PacifiCorp also filed supplemental briefing. In its briefing, PacifiCorp restated its argument that the broad phrase "any mechanism to resolve disagreements" found in the Commission's Alternative Dispute Resolution (ADR) rules is so broad so as to cover negotiations of any kind in any forum. [4] PacifiCorp cites to Docket UE-210795's application of the confidentiality rule to materials created in review of Puget Sound Energy's Clean Energy Implementation Plan. PacifiCorp does not identify an equivalent docket for the purported ADR at issue here —noting only that the Commission asked the parties to work through the Framework Issues Workgroup (FIW) after the conclusion of the 2020 Protocol proceeding to resolve unresolved issues.[5] PacifiCorp notes that the Commission informed the parties that any results from the FIW would still require Commission approval, which it contests brings it under the Commission's ADR regulations purview.[6]

10 In its three opportunities to explain its refusal to comply with discovery, PacifiCorp did not bring a motion for a special order pursuant to WAC 480-07-420(3), to request that the discovery on this subject matter be disallowed or limited; nor has PacifiCorp alleged that subjecting the records at issue to discovery will lead to "[a]nnoyance, embarrassment, oppression, or undue burden or expense."

DISCUSSION

11 Public Counsel's Motion to Compel requests the Commission compel PacifiCorp's production of responsive documents and information to Public Counsel DR 2. Specifically, DR 2 seeks analyses of alternatives to PacifiCorp's proposed allocation methodology, including any associated workpapers and supporting data.[7]

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[4] PAC Suppl. Br. at ¶¶ 6-8.

[5] PAC Suppl. Br. at ¶ 9.

[6] PAC Suppl. Br. at ¶¶ 4-6.

[7] Public Counsel's Motion to Compel, at ¶ 1 (Jun. 20, 2025).

12 In response to Public Counsel's DR 2, PacifiCorp initially responded on May 19, 2025, arguing that "[a]nalysis that was conducted for the FIW was conducted with stakeholders from all six jurisdictions in which PacifiCorp operates and was conducted under a Non-Disclosure Agreement."[8]

13 On June 13, 2025, PacifiCorp submitted a supplemental response to DR 2, objecting that DR 2 sought information covered under confidential settlement negotiations as identified by WAC 480-07-700(6)(b).[9]

14 Pursuant to Order 02 in this docket, Public Counsel and PacifiCorp met to confer regarding the Company's objections on May 27, 2025, and on June 18, 2025.[10]

15 Therefore, this Motion is properly before the Commission for resolution. Accordingly, we turn to the parties' arguments on the remaining objection – that the analyses and supporting documents sought by Public Counsel are protected from discovery pursuant to WAC 480-07-700(6)(b).

16 PacifiCorp argues 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[.]"[11] PacifiCorp argues that because the analyses sought by Public Counsel were prepared solely for discussion among participants to the FIW in the Multi-State Process (MSP), whose purpose was to resolve cost allocation issues, the information should be protected from disclosure.[12]

17 PacifiCorp argues that WAC 480-07-700 broadly covers any mechanism to resolve disagreements, in whole or in part, without contested hearings, to include voluntary negotiations with any party without commission oversight.[13] PacifiCorp asserts that the FIW discussion materials meet this definition because the goal of the group was to resolve methodology issues, like the WIJAM.[14]

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[8] Public Counsel's Motion to Compel, Attach. B at 2 (Jun. 20, 2025).

[9] PacifiCorp's Response, at 1 (Jun. 30, 2025).

[10] Public Counsel's Motion to Compel, at ¶ 2.

[11] PacifiCorp's Response, at ¶ 7 *citing* WAC 480-07-700(6)(b).

[12] PacifiCorp's Response, at ¶ 7.

[13] PacifiCorp's Response, at ¶ 8 *citing* WAC 480-07-700(4)(a).

[14] PacifiCorp's Response, at ¶ 8.

18 Further, the Company argues that allowing discovery of settlement negotiations would undermine the MSP and raise serious concerns for cooperation amongst the parties.[15]

19 In response, Public Counsel and AWEC each argue the FIW should not be considered a "settlement negotiation" because the MSP addressed issues outside of any litigated proceeding within the Commission's jurisdiction; and because it does not meet the definition of collaborative, settlement conference, or mediation pursuant to the Commission's rules.[16]

20 Public Counsel argues that WAC 480-07-700 provides that the Commission supports alternative dispute resolution to resolve disputes without the need for contested hearings. Public Counsel asserts that the protections apply to Commission adjudicated proceedings, and a party privy to protections under WAC 480-07-700 therefore is a litigant. Public Counsel asserts that the MSP is a policy discussion, with non-binding outcomes on participants, and that within Washington there are no dockets associated with the process where a contested hearing would occur.[17]

21 Further, Public Counsel argues that the most applicable forms of alternative dispute resolution comparable to the MSP are "voluntary negotiation" and "Commission-directed negotiation."[18] Public Counsel argues that the MSP fits neither definition. First, Public Counsel argues that voluntary negotiations apply in disputes within the Commission's jurisdiction, and the MSP is not. Second, Public Counsel asserts that Commission-directed negotiations are either settlement conferences or collaboratives, which are created either by the Commission on its own motion or in response to a petition, neither of which occurred here.[19]

22 AWEC similarly argues that the MSP is not a collaborative because it was not established by the Commission on its own motion or initiated in response to a petition.[20]

DECISION

23 We agree with Public Counsel and AWEC. WAC 480-07-700(6) broadly applies to "any settlement negotiation, including collaboratives, settlement conferences, and mediations .

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[15] PacifiCorp's Response, at ¶ 10.

[16] Public Counsel's Add. Brief, at ¶¶ 4-5; AWEC's Add. Brief, at ¶ 6 *citing* WAC 480-07-700.

[17] Public Counsel's Add. Brief, at ¶ 4.

[18] Public Counsel's Add. Brief, at ¶ 5.

[19] Public Counsel's Add. Brief, at ¶ 5 *citing* WAC 480-07-700(5) & WAC 480-07-720.

[20] AWEC's Add. Brief, at ¶ 6.

. . .” Settlement conferences include “any discussion or other communication between two or more parties in an adjudicated proceeding intended to resolve one or more disputed issues.”[21] Further, voluntary negotiations, arbitration, and mediation apply to disputes within the Commission’s jurisdiction, or where a mediator or arbitrator is assigned by the Commission.[22]

24 The MSP is not a settlement conference because it does not currently exist before the Commission as an adjudicative proceeding. Further, the Commission did not assign an arbitrator or mediator, and to the Commission’s knowledge, no arbitrator or mediator was ever assigned to lead the MSP. While PacifiCorp seems to assert that the disputes discussed at the MSP were within the Commission’s jurisdiction because any resulting resolution would need to come before the Commission for approval, and therefore the MSP should be construed as a voluntary negotiation, we do not agree.[23]

25 PacifiCorp established the MSP and Framework Issues Group, not the Commission, to address several issues across PacifiCorp’s service territories.[24] Some of these issues may have – but ultimately did not – result in parties submitting a proposal to the Commission for approval. However, the MSP was simply outside Commission jurisdiction. It was not a Commission led process, nor was it established or sanctioned by the Commission as part of any proceeding. The MSP was not the topic of any particular docket or adjudication – and has only been vaguely mentioned in Commission proceedings. Accordingly, we agree with AWEC and Public Counsel that the MSP discussions were neither a voluntary negotiation nor collaborative under WAC 480-07-700 *et seq*.[25]

26 While we are sensitive to PacifiCorp’s argument that granting Public Counsel’s Motion to Compel could impact discussion in the MSP, we do not believe that the Company has provided a basis for precluding discovery of the materials sought by Public Counsel in relation to DR 2. We would continue to encourage the parties, including Public Counsel, to participate in any future MSP proceedings and believe that the process may someday produce agreement among the parties. Further, this Order does not undermine the

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[21] WAC 480-07-700(5).

[22] WAC 480-07-700(4)(a), (c), & (e).

[23] *See*, PacifiCorp’s Response, at ¶ 8.

[24] *See*, AWEC’s Add. Brief, at ¶ 6 *citing In re PacifiCorp 2019 General Rate Case*, Docket No. UE-191024, Exh. EL-1t at 28:5-8. 2020 Protocol § 6; *see also*, AWEC Add. Brief, at ¶ 1.

[25] We further note that to hold otherwise would result in an absurd result, whereby any company regulated by the Commission could allege otherwise discoverable material was protected by WAC 480-07-700(6)(b) simply by holding discussions prior to an adjudicated case in an attempt to resolve purported potential issues.

Commission's support of dispute resolution but merely speaks to the applicability of the stated basis for objection raised in response to Public Counsel's DR 2.

27 Notwithstanding these sensitivities, we note that ¶ 13 of PacifiCorp's response reveals a fundamental misunderstanding of the posture of this discovery dispute; it states, "[f]inally, while the ADR rule prohibits disclosure 'to the extent permitted by law[,]' no party has argued that PacifiCorp is required by law to disclose confidential settlement information to a non-participant like Public Counsel." We note that no one is asking PacifiCorp to be compelled to provide documents to a non-party or to reveal confidential information beyond the scope of a protective order. The current request is between a party in this adjudication to another party in this adjudication for relevant records in the possession of the party holding information. A response to this discovery request for relevant documents would be subject to the Protective Order in this case.

28 The regulation allows the Commission to protect certain records if there is legal authority to do so. PacifiCorp has not cited to a statute or relevant legal doctrine that would justify withholding or divergence from normal procedural practice. Yet, PacifiCorp failed to request a Special Order pursuant to WAC 480-07-420(3) to prevent or limit this discovery and appears to have had no procedural basis for its original response to DR 2.[26] To the extent that such arguments may have been applicable, we deem PacifiCorp to have waived such objections by failing to raise them. Further, we note that to the extent the information is confidential, PacifiCorp's response failed to properly designate them and present them for an *in camera* review pursuant to ¶ 16 of Order 03.

29 Finally, despite assertions that Public Counsel is attempting to gain access to workpapers produced in a forum in which it chose not to participate, we note that Public Counsel did not ask for MSP workpapers but only for any analysis that might exist regarding alternatives to PacifiCorp's proposed allocation methodology.

30 **THE COMMISSION ORDERS** that Public Counsel's Motion to Compel is GRANTED as explained in this order. PacifiCorp should respond to Public Counsel DR 2 within 5 days of this order.

[26] We are cognizant that this undue delay may have prejudiced Public Counsel's ability to prepare its testimony; Public Counsel will alert the presiding officer whether it requires a continuance of its response deadline within five days of receipt of the responsive records.

DATED at Lacey, Washington, and effective July 17, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Connor Thompson*
CONNOR THOMPSON
Administrative Law Judge

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