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 REPSONSE TO PETITION FOR INTERLOCUTORY REVIEW

I. INTRODUCTION

1. Public Counsel respectfully requests the Commission deny PacifiCorp's (the Company) Petition for Interlocutory Review. The Commission should deny PacifiCorp's petition for two reasons. First, the petition is procedurally improper. As PacifiCorp repeatedly stated, it has already produced materials responsive to Public Counsel's Data Request No. 2 to the parties. There is nothing else for the Commission to do here. If PacifiCorp has suffered any harm—which it has not—it should have sought relief immediately following the issuance of Order 05, before producing material.

2. PacifiCorp also vastly overstates the scope of Order 05. The Order has nothing to say about negotiations around wildfire or insurance costs. The Order is strictly about the Company's defunct Multistate Process (MSP). PacifiCorp's petition is nothing more than an improper request for an advisory opinion applying to facts and negotiations not at issue in this proceeding. If PacifiCorp wants the Commission to interpret its ADR rules as applied to other issues, it

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should file a petition for a declaratory order or file a motion for a protective order in a different, more relevant proceeding.

3. PacifiCorp's Petition also fails on the merits. Order 05 does not promote an overexpansive definition of "voluntary negotiation." Rather, Order 05 correctly concluded PacifiCorp's MSP did not qualify as alternative dispute resolution (ADR) under WAC 480-07-700 within the Commission's jurisdiction. Simply, the MSP occurred outside of the Commission's jurisdiction. To find otherwise would require the Commission to read language into the regulation that is not there while ignoring language that is.

4. Order 05 is correct. The MSP was not ADR within the meaning of the Commission's rules. The Order should stand as written.

II. BACKGROUND

5. PacifiCorp filed its power-cost-only rate case (PCORC) on April 1, 2025, in response to the Commission's directive in Order 09 from Docket UE-230172, PacifiCorp's 2023 general rate case.[1] In its Order in PacifiCorp's 2022 PCAM, the Commission directed PacifiCorp to propose a new allocation methodology to replace the Washington Inter-Jurisdictional Allocation Methodology (WIJAM), which has left Washington disproportionately exposed to market volatility relative to the rest of PacifiCorp's system.[2] In its PCORC filing, PacifiCorp proposes its WIJAM replacement: the 2026 Protocol. PacifiCorp's new protocol makes three substantial allocations: (1) allocation of Chehalis on a situs basis; (2) removal of Hermiston from

[1] *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pacific Power & Light Co.*, Docket UE-230172 & UE-210852 Order 09, ¶ 14 (May 16, 2024).
[2] *In re Puget Sound Energy Power Cost Adjustment Mechanism*, Docket UE-230313, Order 01 (Nov. 22, 2023).

Washington rates; and (3) a greater allocation of the Rolling Hills wind farm.[3] Public Counsel asked for PacifiCorp's analyses of alternatives to these allocations through Data Request No. 2. PacifiCorp objected to this request, asserting its analyses occurred within the context of its Multistate Process. The MSP is a decades-long forum of interested parties that discussed cost-allocation issues across PacifiCorp's six state system. The MSP exists outside of many dockets and does not bind any commission.

6. Following the motion practice, Administrative Law Judge (ALJ) issued Order 05 and compelled PacifiCorp to respond to Public Counsel's Data Request No. 2 within five days of its Order. Order 05 made no other findings. PacifiCorp promptly complied with the Order and provided records to Public Counsel and other parties.

III. ARGUMENT

7. The Commission should deny PacifiCorp's petition for two reasons. First, the Petition is procedurally improper. PacifiCorp has already complied with Order 05 by providing discovery to Public Counsel and other parties. Accordingly, PacifiCorp is not genuinely seeking review of the Order. Rather, it is asking for an advisory opinion about matters not at issue in this proceeding. Second, PacifiCorp's argument fails on the merits because the MSP is not ADR within the meaning of WAC 480-07-700. Only voluntary negotiations within the Commission's jurisdiction, i.e., within a Commission proceeding, are exempt from disclosure under the Commission's ADR rules.

[3] Direct Testimony of Ramon J. Mitchell, Exh. RJM-1CT at 6:21–7:7 (filed Apr. 1, 2025).

A. The Company's Motion is Procedurally Improper.

8. The Commission should deny PacifiCorp's motion out of hand as procedurally improper. PacifiCorp claims its Petition presents "an issue of first impression" and that WAC 480-07-700 "warrants *clarification* by the Commission."[4] Without this clarification, PacifiCorp contends it would suffer substantial prejudice under WAC 480-07-810(3)(b) on account of other interjurisdictional negotiations surrounding wildfire and insurance cost allocation.

9. PacifiCorp's contentions are entirely moot. PacifiCorp admits it has already complied with Order 05 and produced discovery to Public Counsel. PacifiCorp had the option to seek interlocutory review before complying with Order 05. With its Petition, PacifiCorp is seeking nothing more than an advisory opinion about a moot issue.

10. Worse, PacifiCorp is asking the Commission to rule on issues not currently before it. The posture of this case is a PCORC in which PacifiCorp has proposed a replacement cost allocation methodology. This case does not involve wildfire or insurance cost allocation, or any other cost allocation forums PacifiCorp wishes to hold. The Commission does not have facts before it to determine whether multistate discussions on those topics qualify as ADR under WAC 480-07-700. If PacifiCorp wants the Commission to so rule, it should seek a motion for a declaratory order per WAC 480-07-930. The Commission should deny PacifiCorp's petition for this reason alone.

B. The Multistate Process is not Alternative Dispute Resolution Within the Meaning of WAC 480-07-700.

11. PacifiCorp promotes an expansive reading of WAC 480-07-700 that is completely

[4] PacifiCorp's Petition ¶ 16 (filed July 28, 2025) (emphasis added).

inconsistent with its plain language. The Commission should reject PacifiCorp's interpretation.[5]

1. The MSP is outside Commission jurisdiction.

12. PacifiCorp erroneously contends Order 05 erred in stating the MSP was not a dispute within the Commission's jurisdiction per WAC. Only voluntary negotiations within the Commission's jurisdiction qualify as ADR for purposes of WAC 480-07-700.[6] PacifiCorp contends a voluntary negotiation is within the Commission's jurisdiction is within the Commission's *subject matter* jurisdiction.

13. PacifiCorp's argument fails for two reasons: it requires the Commission to read language into the regulation that is not there while also ignoring language that is. PacifiCorp's reading of the regulation inappropriately requires the Commission to read the words "subject matter" into WAC 480-07-700(4)(a). The regulation says nothing of "subject matter jurisdiction." It speaks only to jurisdiction. [7] Further, the Company's reading requires the Commission to ignore key language of the provision. According to WAC 480-07-700(4)(a), a voluntary negotiation only qualifies as ADR subject to the rules protection if it occurs between "*parties to a dispute* within the Commission's jurisdiction."

14. The Commission should not adopt a reading of the regulation that is so plainly divorced from its text. By denying the Company's Petition, the Commission will reaffirm what the MSP was: a forum of interstate interested parties discussing policy concerning allocation of costs. The

[5] PacifiCorp asks the Commission to clarify that "voluntary negotiations" per WAC 480-07-700(4)(a) can occur without Commission direction. Public Counsel does not object to that clarification.
[6] WAC 480-07-700(4)(a) ("*Voluntary negotiation.* 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.") (emphasis original).
[7] *State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002) ("Where the Legislature omits language from a statute, intentionally or inadvertently, this court will not read into the statute the language that it believes was omitted.").

Commission should deny PacifiCorp's petition on this basis.

2. The Commission's ADR Rules only Apply to Pending Adjudications.

15. PacifiCorp erroneously contends voluntary negotiations outside of pending Commission proceedings qualify as ADR within the meaning of Commission rules. Again, PacifiCorp's reading departs from the rule's text.

16. The regulation, when read as a whole, clearly limits ADR disclosure protections to matters within pending dockets. The rule references adjudication throughout its language. For example, the rule states "the commission cannot delegate to the parties the power to make final decisions in *adjudicative proceedings*."[8] Further, "the Commission will determine" whether to adopt a proposed settlement or other agreement when it "resolves some or all of the issues presented in the proceeding."[9] The Commission cannot adopt or approve a settlement agreement outside of a pending docket. Further, participants in "*any settlement negotiation*" must periodically apprise the Commission of progress made toward settlement.[10] Again, this cannot occur outside of a docketed Commission proceeding.

IV. CONCLUSION

17. In its initial motion to compel, Public Counsel requested information that was plainly relevant to the issues of this case. The motion was granted and PacifiCorp complied with the Order. There is nothing left for the Commission to decide on this issue. If PacifiCorp wishes for a ruling that will apply to other cost allocation matters, it has other, more appropriate avenues to seek such a ruling. The Commission should deny PacifiCorp's Petition on that basis alone.

[8] WAC 480-07-700(1).
[9] *Id.*
[10] WAC 480-07-700(6)(c).

18. If the Commission chooses to reach the merits of PacifiCorp's petition, it should deny the Petition based on the Company's strained reading of the regulation. By its plain language, only voluntary negotiations within the Commission's jurisdiction qualify as ADR. The MSP is outside the Commission's jurisdiction. The ALJ did not err in granting Public Counsel's motion.

DATED this 7th day of August 2025.

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