BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP dba PACIFIC POWER & LIGHT COMPANY, Respondent.	Docket UE-250224 PACIFICORP'S REPLY TO RESPONSES TO ITS MOTION TO AMEND THE STANDARD PROTECTIVE ORDER

I. INTRODUCTION

1 Public Counsel has requested potentially market-sensitive data that the Washington Department of Ecology (Ecology) prohibits from disclosure under the Washington Climate Commitment Act (CCA) rules, Chapter 173-446 WAC, and that is protected under WAC 480-07-160 and RCW 80.04.095. PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) does not dispute its obligation to respond to this data request. Instead, the Company seeks to comply within the bounds of applicable law.

2 To ensure legal compliance, PacifiCorp consulted with Ecology and received the precise language that Ecology believes is required for confidentiality protections. Based solely on Ecology's proposed language, PacifiCorp moved for an Amended Protective Order that will govern all such sensitive data throughout this proceeding—not just this particular discovery request. The protective order modification resulted from necessary coordination between Ecology's statutory confidentiality authority and the Commission's procedural requirements, ensuring compliance with both agencies' legal frameworks.

Given that Ecology supports this motion through the attached sworn declaration and because the Amended Protective Order is required for the protection of market-sensitive data, the Commission should grant PacifiCorp's request.

II. FACTUAL BACKGROUND

3 This matter arises out of PacifiCorp's April 2025 filing of its power cost-only rate case (PCORC). During discovery, Public Counsel requested materials related to PacifiCorp's participation in Washington's Climate Commitment Act Cap-and-Invest Program (Cap-and-Invest Program). The Company believed it could not share this information because it appeared to be "market-sensitive data" under Ecology's disclosure prohibition. However, rather than simply refusing the request on this basis, PacifiCorp recognized its legal obligations to respond while seeking protection from potential liability for sharing prohibited information.

4 In an effort to resolve this issue, PacifiCorp arranged a meeting on June 25, 2025. Ecology, Public Counsel, and Washington Utilities and Transportation Commission (Commission) Staff (Staff) were present. The meeting revealed that the requested information required careful review to determine what could be legally disclosed.[1]

5 Ecology agreed to review PacifiCorp's draft discovery response for compliance. PacifiCorp submitted the response to Ecology for review. Ecology reviewed PacifiCorp's response and recommended seeking greater protections for the data.[2]

6 Ecology collaborated with Staff to propose modifications to the standard protective order. These modifications specifically address "Highly Confidential CCA

[1] *See* Nixon Decl., ¶ 5.
[2] Nixon Decl., ¶ 6.

Information" subject to WAC 480-07-160 and RCW 80.04.095. Ecology provided the proposed language, which PacifiCorp used without edits to draft the Amended Protective Order.[3]

7 PacifiCorp circulated these edits with Ecology, Staff, the Alliance of Western Energy Consumers (AWEC), and The Energy Project (TEP).[4] Unfortunately, PacifiCorp inadvertently omitted Public Counsel from these initial communications and failed to notice this oversight in subsequent meetings. Upon discovery, PacifiCorp immediately acknowledged this error.

8 PacifiCorp submitted the at-issue motion with the Amended Protective Order. AWEC and Public Counsel submitted responses in opposition to the motion; TEP submitted a response requesting further proceedings on the issue of confidential information prohibited from disclosure.

9 Despite PacifiCorp's procedural oversight in omitting Public Counsel during review of the original motion, the Commission should approve the motion because: (1) Ecology—the enforcing agency—recommends this language, as evidenced in the supporting declaration;[5] (2) this is not a discovery dispute subject to WAC 480-07-425(1)(a) meet-and-confer requirements; and (3) the Amended Protective Order does not violate the Public Records Act.

III. ARGUMENT

10 Ecology deems the Amended Protective Order necessary to address potential "Highly Confidential CCA Information."[6] Ecology provided the modified protective

[3] *See* Nixon Decl., ¶ 9.
[4] PacifiCorp originally stated it included Public Counsel; we correct that error here.
[5] *See generally* Nixon Decl.
[6] Nixon Decl., ¶¶ 34, 35.

order language, which PacifiCorp copied verbatim and without edits into the Amended Protective Order.[7]

11 PacifiCorp's response to Public Counsel's Data Requests #21 and #22 may disclose commercially sensitive data governed by WAC 173-446-317.[8] The central issue is not *whether* PacifiCorp will respond—*it will*.[9] The issue is how PacifiCorp can respond while complying with Ecology's regulations and ensuring the protection of market sensitive information. PacifiCorp is prepared to provide the requested data once the Amended Protective Order is in place, therefore ensuring PacifiCorp can comply with Ecology's regulations.

A. The Amended Protective Order is Required for Ecology Rule Compliance and Warranted to Protect Market Sensitive Information.

12 As the enforcing agency for WAC 173-446-317 violations, Ecology's position is most relevant to the issue and is the basis for PacifiCorp's regulatory compliance. Ecology has determined that this information constitutes potentially Highly Confidential CCA Information because it reveals pricing, allowance quantities, and strategic information.[10] Moreover, Ecology believes that the standard order provides insufficient protection for this information.[11]

13 Public Counsel's and AWEC's interpretations of the rule's applicability are irrelevant. Public Counsel's assurances carry no legal or probative weight for PacifiCorp's compliance with Ecology's rules. Ecology has determined that the

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[7] *Id.*, ¶¶ 9, 12, 15.
[8] *See id.*, ¶ 6 (noting that Ecology concluded that the information was of the sort that required protection from public disclosure).
[9] To this end, there is no need for the Commission to order the Company to respond to the data requests as Public Counsel requests.
[10] *See* Nixon Decl., ¶¶ 30-33.
[11] *Id.*, ¶¶ 34-36.

information requested by Public Counsel includes bidding information prohibited from disclosure under WAC 173-446-317,[12] and PacifiCorp must follow the law as interpreted by the responsible regulatory agency.

14 To the extent that the information requested by Public Counsel does not meet the definition of information prohibited from disclosure under WAC 173-446-317, the Amended Protective Order is nonetheless warranted under the standard provided by WAC 480-07-420(2)(a).[13] As described in Ecology's supporting declaration, the requested information is highly market sensitive.[14] And as Ecology further explained, the standard protective order is insufficient to protect against misuse or improper disclosure here, where the Cap-and-Invest market involves sophisticated participants with shared consultants, advisors, and industry relationships, and where any Cap-and-Invest Program market participant could directly benefit from PacifiCorp's strategic information and would have significant financial incentives for market manipulation.[15]

15 PacifiCorp and Ecology agree that a future discussion and proceeding may be appropriate to develop to develop a model order to protect Highly Confidential CCA Information.[16] That does not negate the need for the Amended Protective Order here, necessary to protect responsive information in this proceeding.

B. PacifiCorp's Inadvertent Omission of Public Counsel Did Not Violate WAC 480-07-425.

16 PacifiCorp's unintentional exclusion of Public Counsel from meetings and communications does not warrant denying this motion. WAC 480-07-425—which Public

[12] Nixon Decl., ¶¶ 29-32.
[13] *See id*. at ¶¶ 39-40.
[14] *Id*. at ¶ 39.
[15] *Id*. at 9, ¶¶ 34-35.
[16] *Id.* at ¶ 41.

Counsel cites—applies only to discovery disputes. The Commission should not apply discovery dispute requirements to non-dispositive motions for a number of reasons.

17 As an initial matter, this motion pertains to legal compliance facilitation, not a discovery dispute. PacifiCorp never disputed the validity, scope, or appropriateness of Public Counsel's underlying data request. The Company agreed to provide the requested information and sought only to establish appropriate legal protections to enable full compliance. The Amended Protective Order establishes a framework for ongoing legal compliance throughout the proceeding, benefiting all parties by creating clear parameters for information sharing. Unlike discovery disputes that resolve specific disagreements about the production of information, this motion establishes a process for transparent sharing of information while protecting the Cap-and-Invest market from manipulation. Thus, this is not a "discovery dispute" subject to WAC 480-07-425

18 Additionally, PacifiCorp did not meet and confer regarding the initial protective order, yet Public Counsel raised no procedural objections then—signaling that protective order motions fall outside this requirement. Furthermore, no Commission rule requires meet-and-confer before filing motions generally. While such consultation represents good practice that PacifiCorp endeavored to follow, here, failing to do so does not violate established procedures.

19 Requiring meet-and-confer for every protective order modification would create procedural inefficiency without corresponding benefit, as parties retain full opportunity to present arguments through responsive motion practice. Public Counsel's and AWEC's interests have been fully protected through the formal briefing process. Public Counsel and AWEC filed comprehensive oppositions addressing all aspects of the proposed

protective order modification, demonstrating that formal briefing provides adequate procedural protections. The Commission retains discretion to modify, condition, or deny the requested protective order based on all parties' input. No party's substantive rights or interests are compromised by the preliminary compliance discussions. Finally, Public Counsel and AWEC remain fully able to participate in any future modifications or interpretations of protective order terms through established Commission procedures.

20 A number of policy considerations support the process by which PacifiCorp and Ecology developed the Amended Protective Order. The involvement of a regulatory agency with independent statutory authority distinguishes this matter from typical inter-party discovery disputes. Ecology's request for enhanced protective order terms derives from its independent regulatory obligations, not from positions advocated by any party to this proceeding. When regulatory agencies request specific legal protections to enable information sharing, efficiency in establishing those protections serves the public interest by avoiding delays in regulatory compliance. Applying discovery dispute procedures to administrative protective order motions would create inefficient precedent requiring unnecessary preliminary conferences for routine procedural matters.

21 In short, WAC 480-07-425's meet-and-confer requirement does not apply to the at-issue motion.

C. AWEC's Arguments Do Not Support Denying this Motion.

22 AWEC argues it was improperly excluded from initial discussions and that earlier inclusion could have avoided the dispute. However, the initial discussions were a separate matter: they pertained to the discovery dispute and not potential modifications to the protective order. To that end, no Commission rule requires party inclusion in every

discovery dispute of which the party is not a part. Similar protective order negotiations routinely occur between utilities, agencies, and Staff before party circulation. Furthermore, AWEC received complete opportunity to review and comment on the proposed protective order, including by providing its own redlined version and participating in the July 22 meeting.[17]

23 AWEC claims that the protective order exceeds statutory authority under RCW 70A.65.100 and WAC 173-446-317, potentially violating Public Records Act requirements. As described in Ecology's declaration, Ecology disagrees, and RCW 70A.65.100(9) grants Ecology specific authority to determine what constitutes "market sensitive information." The Commission should defer to Ecology's expertise in interpreting its own statutory authority. And, as stated above, to the extent the information addressed by the protective order is not expressly prohibited from disclosure under RCW 70A.65.100 and WAC 173-446-317, Ecology's declaration demonstrates that the potential harms of disclosure justify a highly confidential protective order pursuant to WAC 480-07-420(2)(a).

24 Finally, AWEC argues that the protective order is overly broad and should not serve as precedent. As discussed above, Ecology believes that the scope of the protective order as presented is necessary.[18] However, Ecology and PacifiCorp agree that an additional proceeding to develop a model protective order for Highly Confidential CCA Information is likely appropriate.

[17] *See* Nixon Decl., ¶¶ 10-13.
[18] *See id.* at ¶¶ 34-36.

IV. CONCLUSION

25 The state agency responsible for enforcing the relevant rule supports this motion. For this reason and those detailed above, PacifiCorp respectfully requests that the Commission adopt the Amended Protective Order.

Respectfully submitted this 12th day of August, 2025.

/s/ Tiffanie A. Ellis

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