

# **WUTC v. Pacificorp dba Pacific Power & Light Company**

**Docket No. UE-230172 - Vol. II**

**October 12, 2023**



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	
vs.	)	DOCKET NO. UE-230172
	)	
PACIFICORP d/b/a PACIFIC POWER &	)	
LIGHT COMPANY,	)	
	)	
Respondent.	)	
	)	
	)	

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BEFORE ADMINISTRATIVE LAW JUDGE  
MICHAEL HOWARD

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VERBATIM REPORT OF PROCEEDINGS  
HEARING ON MOTION TO COMPEL - VOL II  
PAGES 22-50

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DATE TAKEN: October 12, 2023  
TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY,  
FAPR, RPR, WA CCR 2731

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1                   October 12, 2023 at 1:30 p.m.

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4                   JUDGE HOWARD: Good afternoon. I see that  
5 records center has started the recording of this hearing  
6 on staff's motion to compel. I believe this will be  
7 transcribed later by our court reporter. So I'm not --  
8 I'm looking to see if the court reporter is here right  
9 now, but we believe they will be transcribing this later.  
10 It's recorded at this time.

11                   So I would consider us on the record. Today  
12 is Thursday, October 12, 2023. The time is 1:30 p.m.  
13 This case is captioned The Washington Utilities and  
14 Transportation Commission versus PacifiCorp, doing  
15 business as Pacific Power and Light Company,  
16 Docket UE-230172, and we're here holding a hearing  
17 following staff's motion to compel discovery.

18                   My name is Michael Howard. I'm an  
19 administrative law judge at the commission. I'm  
20 presiding in this case alongside the commissioners, but  
21 they will not be joining us -- the commissioners will not  
22 be joining us at this particular hearing today.

23                   If you are joining us and observing or calling  
24 in, please be aware that you likely need to mute your  
25 line if your number ends in 1937. I'm not hearing much

1 yet, but you might want to just be aware of that.

2 All right. So let's take appearances from the  
3 parties, and then we'll get to the merits of staff's  
4 motion. Could we start with the company?

5 ATTORNEY PEASE: Good afternoon, your Honor.  
6 Jocelyn Pease with McDowell Rackner Gibson, counsel for  
7 PacifiCorp.

8 And I have with me also Ajay Kumar and Carla  
9 Scarsella, counsel for PacifiCorp.

10 JUDGE HOWARD: Thank you.

11 Could we hear from staff?

12 ATTORNEY CALLAGHAN: Thank you, your Honor.  
13 Nash Callaghan, assistant attorney general on behalf of  
14 commission staff.

15 JUDGE HOWARD: Thank you.

16 Could we have an appearance from public  
17 counsel?

18 ATTORNEY GAFKEN: Good afternoon. This is  
19 Lisa Gafken, assistant attorney general appearing on  
20 behalf of public counsel.

21 JUDGE HOWARD: Thank you.

22 Could we have an appearance from AWEC?

23 All right. It appears AWEC may not be joining  
24 us today.

25 Could we have an appearance from The Energy

1 Project?

2 ATTORNEY ZAKAI: Good afternoon. This is  
3 Yochi Zakai, appearing on behalf of The Energy Project.

4 JUDGE HOWARD: Thank you.

5 Could we have an appearance for Sierra Club?

6 ATTORNEY MONAHAN: Good afternoon, your Honor.  
7 This is Rose Monahan on behalf of Sierra Club.

8 JUDGE HOWARD: Thank you.

9 Could we hear from Walmart?

10 All right. It appears Walmart's counsel may  
11 not be joining us today.

12 Could we hear from NWECC?

13 ATTORNEY SANGER: Good afternoon. This is  
14 Irion Sanger appearing today for NWECC.

15 And Joni Sliger, an attorney in my office, is  
16 also here today.

17 JUDGE HOWARD: All right. Thank you.

18 So I have reviewed staff's motion to compel  
19 responses to data requests -- its Data Requests 152, 154  
20 -- or I should say 154 through 157 -- and the underlying  
21 data requests themselves and the responses.

22 I've also reviewed the company's response to  
23 the motion, its supplemental data request responses that  
24 were attached to that, and Mitchell's declaration.

25 I'm going to address staff's motion in two

1 parts. First, I'm going to rule on PacifiCorp's  
2 objection to Data Requests 152 and 154 through 147 on the  
3 basis that these requests seek rebuttal testimony before  
4 the deadline established in the procedural schedule.

5 And then second, I'm going to address  
6 PacifiCorp's objection to Data Request 155 on the basis  
7 that this request is unduly burdensome. And I will ask  
8 for arguments from the parties on that later point.

9 For this first point, though, I am just going  
10 to provide a ruling. So first, I'm going to address the  
11 objections provided to all these data requests on the  
12 basis that they seek rebuttal testimony before the  
13 deadline established in the schedule. I am finding that  
14 this is not a proper objection. This objection should be  
15 denied, and the company should be compelled to respond to  
16 staff's Data Requests 152, 154, 156, and 157 by 5:00 p.m.  
17 on Monday, October 16, 2023.

18 I'm going to explain my finding. When the  
19 commission or court provides for formal discovery, a  
20 party has fairly broad rights to discovery of any  
21 information reasonably calculated to lead to admissible  
22 evidence. Of course that's balanced by the question of  
23 whether it's unduly burdensome and other considerations.

24 A party is entitled to ask for another party's  
25 position or its convention on certain issues, but a court



1 may, of course, allow the answering party additional time  
2 until later in the case to develop its positions and  
3 conventions so that the answering party has sufficient  
4 time to conduct discovery.

5           In this case, I'm not persuaded by the  
6 company's objections. Rebuttal and cross-answering  
7 testimony in this case is due on October 27. And this  
8 case has been pending for several months already. I  
9 believe there has been adequate time to conduct discovery  
10 and develop positions and intentions. Staff and other  
11 parties are entitled to seek discovery on those  
12 positions.

13           The fact that the company intends to address  
14 an issue later in rebuttal testimony is not itself a  
15 valid basis, that I'm aware of, recognized in the case  
16 law for objecting to discovery.

17           And there is no allegation that these data  
18 requests seek work product that should not be provided.

19           Staff and other parties are also entitled to  
20 ask about the company's inputs to its modeling and its  
21 assumptions. Staff's requests in Data Request 154, for  
22 example, reasonably asks for the basis for the company's  
23 calculation of forecasted power costs based on calendar  
24 year 2024 data. There is no reason why this discovery  
25 should be denied because the company intends to address

1 the issue later in rebuttal.

2 To the extent this objection is articulated  
3 now as being concerned with the burdens of providing this  
4 information, this is not persuasive either. This was not  
5 clearly raised as an objection to the majority of the  
6 data request responses at issue aside from Data Request  
7 155. The company has had adequate time to conduct  
8 discovery, and it has been on notice of staff's intent to  
9 file a motion to compel at least since October 3. And  
10 the commission also issued a notice last week noting the  
11 company may be required to respond to these data requests  
12 by Monday, October 16.

13 And finally, there's no allegation here that  
14 staff failed to meet and confer as required by our rules.

15 So next, I'm turning to the company's second  
16 objection to staff's Data Request 155, and that it would  
17 be unduly burdensome and time consuming to provide this  
18 information.

19 And our rule, WAC 480-07-400, paragraph  
20 (1)(c)(iii) provides, "If a party relies on a cost study  
21 model or proprietary formula or methodology, the party  
22 must be willing on request to rerun or recalculate the  
23 study, model, formula, or methodology based on different  
24 inputs and assumptions subject to the standards in  
25 Subsection (iii) of this section. The commission

1 otherwise will not order a party to respond to a data  
2 request that would require creation of new data or  
3 documents unless there is a compelling need for such  
4 information."

5           So I have reviewed all the materials, and in  
6 particular, Mitchell's declaration, which is focused on  
7 this issue.

8           And I would like to hear from staff as the  
9 moving party here. Mitchell has stated in their  
10 declaration that providing the responses based in part on  
11 2025 calendar year data would require not simply changing  
12 the inputs to the model, but new modeling, new forecasts.

13           Does staff agree with that characterization of  
14 what would be required, and if so, does staff have a  
15 compelling need for this information?

16           ATTORNEY CALLAGHAN: Thank you, your Honor.  
17 So staff does recognize that the response to DR 155 will  
18 take time and resources, given the need to add January to  
19 March of 2025 into the model.

20           But staff urges the commission to provide --  
21 to compel the company to provide the answer to DR 155.  
22 The reason staff is asking the company to produce those  
23 Aurora outputs from April 2014 to March 2025 is because  
24 of the suspension date in the prehearing conference  
25 order.

1 Under WAC 480-07-510, Section (3)(c)(ii), the  
2 commission rule states that quote, Pro forma fixed and  
3 variable power costs, net of power sales, may be  
4 calculated directly based either on test year normalized  
5 demand and energy load, or on future rate year demand and  
6 energy load factored back to the test year loads."

7 That conjunctive "or" means that under  
8 commission rules, power costs must either be based on the  
9 test year, which it isn't here or on the future rate  
10 year. The company's current recommendation is not based  
11 on either. It's calendar year 2024. So the company's  
12 current proposal is actually out of compliance with  
13 commission rule.

14 Unfortunately, when staff conducted the  
15 initial compliance check-in of this case, this issue  
16 wasn't caught. But staff strongly believes that this  
17 issue should be remedied now by requiring the company to  
18 answer DR 155.

19 And again, the compelling reason that staff  
20 needs this information is the three-month shift from  
21 calendar year 2014 to the 12 months ending in March 2025  
22 is potentially significant due to the expected January to  
23 April 2024 outage of Jim Bridger 1 and 2.

24 JUDGE HOWARD: All right. Thank you.

25 Can I hear from the company?

1           ATTORNEY PEASE: Yes, thank you, your Honor.

2           What staff is getting at here is a concern  
3 that is raised very late in this proceeding. As our  
4 witness, Mitchell, indicated in his declaration,  
5 preparing the model at this stage is simply not possible,  
6 given the company's resources, to include the 2025 data.

7           To the extent that the commission may agree  
8 with staff's position and may later direct the company to  
9 prepare this modeling in a compliance filing, that is  
10 something that could be done, potentially.

11           But at this point -- at this point, that would  
12 be premature and would be accepting both AWEC and staff's  
13 position, and be incredibly burdensome to the company  
14 right now in terms of preparing rebuttal testimony and  
15 responding to this data request.

16           I also understand that we may have additional  
17 commentary from Ajay Kumar from the company.

18           JUDGE HOWARD: All right. If Mr. Kumar would  
19 like to speak as well, I'd welcome that.

20           ATTORNEY KUMAR: Sorry. I'm trying to get my  
21 video to show up, your Honor. There.

22           I think the issue that Mr. Callaghan raised,  
23 I think it's one that we're just hearing about now, this  
24 sort of -- the notion that we are out of compliance, we  
25 haven't heard that before.

1           I think the -- and to speak maybe to more of  
2 the technical side of this, I think we would disagree  
3 with that view, because the way we've done the net power  
4 cost modeling in this case is actually consistent with  
5 how we've done net power cost modeling and the test year  
6 in previous cases, and I'm looking specifically at the  
7 PCORT (phonetic) that was decided in 2022.

8           And in fact, the manner in which that modeling  
9 occurred is very similar to how we've proposed it to  
10 occur in this case; and that, of course, was approved by  
11 the commission.

12           And in fact, some of -- parts of this issue  
13 around the appropriate scope of the test year was raised  
14 in that PCORT, and the commission kind of ruled in our  
15 favor and accepted our modeling adjustments in that  
16 proceeding.

17           And so, you know, that's kind of my initial  
18 thoughts on that position that staff is taking, and it's  
19 -- you know, of course, hearing it for the first time,  
20 I'm sure we have additional considerations.

21           And I think I do want to speak to the fact  
22 that, I mean, we have very serious concerns about how  
23 staff's -- essentially, that this adjustment would impact  
24 sort of the coordination with the other revenue  
25 requirement and elements of the case. And that's

1 something that we are going to be speaking to in our  
2 rebuttal testimony, as this is an issue that was raised  
3 by the intervenors.

4 JUDGE HOWARD: All right. I appreciate the  
5 comments from the parties.

6 Turning back to -- I'm going to turn back for  
7 a moment to Mr. Callaghan, and then I'll open up to  
8 whether any of the other parties would like to comment.

9 So Mr. Callaghan, going to the compelling need  
10 issue, I believe you touched on this. You mentioned  
11 those early months of 2025. And I've read some of the  
12 testimony in this case. I'm not fully read up, as I  
13 would be right before the rate case hearing itself. Do  
14 you refer to a Jim Bridger outage?

15 ATTORNEY CALLAGHAN: Yes, that's correct.

16 JUDGE HOWARD: So could you please explain why  
17 the -- those first months of that year are so essential,  
18 whereas the company's -- it seems the company is  
19 intending to provide a partial response in rebuttal  
20 testimony focused on one of the issues raised in this  
21 data request, the ozone rule and removing that.

22 But could you speak more to the first months  
23 and why it's so compelling, in light of the compelling  
24 needs standard, for staff to receive that?

25 And not focus so much on the issue of the rule

1 itself, but in terms of staff's presentation for the  
2 case.

3           ATTORNEY CALLAGHAN: Yes, your Honor. So my  
4 understanding is that the company expects that Jim  
5 Bridger 1 and 2 will be nonoperational from January to  
6 April of that year because they are converting those  
7 facilities from coal to natural gas. So the  
8 unavailability of those facilities would have an impact  
9 on net power costs.

10           And staff wants to look at what that impact  
11 has if you are calculating net power costs based on  
12 calendar year 2024 versus the likely Rate Year 1 calendar  
13 date, which would be closer to beginning in April of  
14 2014. And that impact could be potentially significant.

15           I just want to raise the issue that, you know,  
16 the commission could ultimately agree or disagree with  
17 staff's position or the other non-company party positions  
18 on this issue. But I firmly believe that this  
19 information should at least be available so that the  
20 commission can consider the impacts that that outage has  
21 and weigh that against, you know, when the rate year is  
22 actually starting and whether that is appropriately  
23 matching all the other revenue requirement considerations  
24 in this case.

25           So again, staff recognizes that this is --



1 this would require a lot of work on the company's part,  
2 but power costs are a major issue in this case. It is --  
3 power cost is one of the big drivers of the requested  
4 revenue requirement increase in this case.

5 So in light of all of that, and in light of --  
6 under 400, Subsection (iii), the commission considers all  
7 that. The commission considers basically the -- how  
8 important an issue is. And this is going to be a big  
9 issue in this case that could potentially have a huge  
10 impact. So in light of that, we think it's an  
11 appropriate request.

12 ATTORNEY KUMAR: Your Honor, I would like a  
13 chance to respond.

14 JUDGE HOWARD: Please go ahead.

15 ATTORNEY KUMAR: So I think -- and the way I'm  
16 understanding staff's argument here is that it's  
17 specifically focusing on sort of the impact of the outage  
18 of Jim Bridger in the early part of 2024. And that's  
19 occurring because Jim Bridger Units 1 and 2 are being  
20 converted to gas. And we have provided in our direct  
21 testimony, I believe, the impact of that outage, and  
22 additionally, so -- and that impact on calendar year 2024  
23 power costs.

24 And then I kind of want to maybe also get into  
25 -- I think this was explained a little bit in

1 Mr. Mitchell's testimony. But to shift that impact to  
2 2025, we'll be able to do that if the commission orders  
3 us. We'll absolutely be able to do that in a compliance  
4 filing, because how we structure our power cost filings  
5 is we start building the model for that upcoming test  
6 year, which is usually the following year, '25, so the  
7 end of this year. And then that process kind of goes  
8 into the beginning of next year. And so if ordered to do  
9 that, we'll absolutely be able to do that in a compliance  
10 filing.

11           However, I want to get back to kind of this  
12 point that the data that staff is already looking for,  
13 the impact of that outage, has kind of already been --  
14 there's other ways to look at that, and there's ways to  
15 look at that in the test year.

16           And additionally, the way the rate years are  
17 structured is such that the -- there will be sort of  
18 multiple net power cost updates throughout the course of  
19 the multiyear rate plan to ensure that, you know, net  
20 power costs are updated almost every year so that the  
21 case will, in fact see, and rates will in fact be updated  
22 in '25, to adjust for the -- the, you know, kind of the  
23 gas conversion of those plants and to ensure that that  
24 outage isn't reflected in a future test year.

25           So there's kind of other ways to look at

1 this, and there's other means to get at this information  
2 without requesting the company to do such a, I guess,  
3 nearly impossible lift of work.

4 JUDGE HOWARD: Thank you, Mr. Kumar.

5 And the Bridger outage does not appear to be  
6 discussed in Painter's direct testimony.

7 ATTORNEY KUMAR: It would be in  
8 Mr. Mitchell's direct testimony, I believe.

9 Mr. Painter is focused on the structure, I  
10 believe, of the PCAM.

11 JUDGE HOWARD: Would any other party like to  
12 comment on this issue?

13 I see Ms. Gafken. Please go ahead.

14 ATTORNEY GAFKEN: Yes, thank you. I did want  
15 to go back to the rule, WAC 480-07-400, and look at that  
16 section again under Subsection (1)(iii)(i).

17 And there's a very specific reason why we  
18 require mainly companies to rerun their models based on  
19 inputs that other parties would like to see. That rule  
20 requires that if a party relies on a cost study or a  
21 model or some sort of formula or methodology, they must  
22 be willing to rerun the model or recalculate the model  
23 based on other inputs that other parties would like to  
24 see.

25 The reason that requirement is there is

1 because those models often are not terribly accessible or  
2 easy to run. And so in the past, parties have run into  
3 the issue of, well, we tried to rerun the model and the  
4 company says we didn't do it right.

5 So now we have the rule that says if the  
6 company relies on their model, they have to rerun the  
7 model with other assumptions. And that's what staff is  
8 asking for here.

9 The next sentence that talks about the  
10 compelling need is really -- it doesn't involve the  
11 modeling question. The modeling question is separate.  
12 The company must rerun the model based on other  
13 assumptions.

14 If parties want to ask the company to create  
15 other data or documents, then we have to show the  
16 compelling need.

17 So I just wanted to go back to the rule and  
18 point that out. And I was around during the rulemaking  
19 when that change -- or when it became explicit in the  
20 rule. And it's a very important rule that the companies  
21 are required to rerun their model for us. Thank you.

22 JUDGE HOWARD: Thank you. And I agree, I  
23 mean, it's a significant rule in this context.

24 What do you make of Mitchell's statement in  
25 their declaration that doing what staff asks, including

1 this 2025 data, is not just new inputs, but new models,  
2 new forecasting?

3 ATTORNEY GAFKEN: I guess from my perspective,  
4 I don't give it a whole lot of weight. I understand that  
5 running models does take time and effort and can be a  
6 large lift. But at the end of day, it's the company's  
7 burden to prove that their rate increase is appropriate.  
8 And power costs are a very big issue in this case.

9 JUDGE HOWARD: All right. Thank you.

10 Any other party who would like to weigh in?

11 ATTORNEY KUMAR: If it is helpful, your Honor,  
12 I can again provide more sort of technical -- I'll do my  
13 best to provide more technical information on how the  
14 modeling works.

15 And so when we build the model, it --  
16 essentially, we build a model for a specific year. And  
17 that involves essentially, you take all the transmission  
18 information, the transmission restrictions for that year;  
19 you take all the resource information, the resource  
20 restrictions for that given year, and then you take  
21 market price information, gas price information, coal  
22 input information, and all those are developed by various  
23 business units. And they're all taken together and to  
24 essentially rebuild the model every year for a specific  
25 year.

1           So it's not simply, you know, rerunning the  
2 model. You know, that's something that's easier. This  
3 is in fact rebuilding an entire model for a specific rate  
4 year.

5           JUDGE HOWARD: Thank you. And I read the  
6 similar statements in Mitchell's declaration.

7           Any comments from any of the other parties?

8           ATTORNEY CALLAGHAN: So, your Honor, I did  
9 also want to briefly go back to the rule.

10          So first, I appreciate public counsel's  
11 comments.

12          I didn't want to get into the technical terms  
13 of whether or not something was an input, because staff  
14 felt that even if it wasn't, we met the compelling needs  
15 standard.

16          But I did want to go back to what I think is  
17 an important point about the rule, which is a party under  
18 the commission rules needs to object, if they're going to  
19 object, by the time the response is due. So what the  
20 company filed as their objection on October 2, that is  
21 their objection.

22          The party -- a party responding to a data  
23 request cannot supplement their objections later. That  
24 is explicitly prohibited by the rule.

25          So the issue that the company has here is that

1 their initial objection to 155, they have the rebuttal  
2 testimony objection, and then they have the objection  
3 that it seeks analysis that has not been performed by the  
4 company.

5 Their initial objection does not state that  
6 they're objecting because DR 155 is unduly burdensome.  
7 And at this point, it's too late for them, in terms of  
8 discovery, to raise that objection now. They can object  
9 at the hearing if it's sought to be admitted into  
10 evidence. But for the purposes of discovery, the company  
11 does not get a second bite at the apple.

12 JUDGE HOWARD: Well, thank you, Mr. Callahan.  
13 I know your point as a general matter.

14 I'm going to take a five-minute recess. I  
15 think we will end -- we'll pause the recording. I'm  
16 going to carefully consider the parties' comments. I  
17 appreciate the parties' comments.

18 And I will rejoin here at, let's say 2:05 p.m.  
19 Oh, Sommer Moser, please go ahead.

20 ATTORNEY MOSER: Thank you, your Honor, and I  
21 apologize. I was a few minutes late. I just wanted to  
22 let you know that I was here.

23 JUDGE HOWARD: All right. Thank you.

24 All right. I will -- we will pause the  
25 recording, and I will rejoin and we will restart the

1 recording at 2:05. Thank you, everyone.

2 (Recess.)

3 JUDGE HOWARD: All right. Thank you. I'll  
4 check that we have counsel for the parties back on line.  
5 I see that we have counsel for the company and counsel  
6 for staff.

7 All right. Thank you all for letting me have  
8 a few minutes, which I frequently don't have when making  
9 calls like this. But I did want to try to carefully  
10 think this through, and recognizing that depending on  
11 what the call is, this could involve some weeks of work  
12 for the company's teams.

13 So first, with regards to staff's recent  
14 argument today that the company did not have -- that the  
15 company's objection has shifted or they did not  
16 articulate an unduly burdensome objection in its initial  
17 discovery responses, I take the general point as being  
18 correct; that the company is held to what it states in  
19 its initial objections.

20 But here, given that the company stated that  
21 staff was seeking analysis not yet performed by the  
22 company, I think it's fair to read that as saying that  
23 performing that analysis would be burdensome. So I'm not  
24 limiting the company so strictly and finding that they  
25 did not raise a proper objection that's relevant today.



1           So I am finding that the company should be  
2 required to respond to Staff Data Request 155. I'm going  
3 to provide a time line for responding here shortly.

4           I'm just going to explain some of my reasoning  
5 first. First, I think going to that rule that has been  
6 discussed today, WAC 480-07-400, paragraph 1(c)(iii), I  
7 think the first sentence there, if a party relies on a  
8 cost study model or proprietary formula, and it  
9 continues, that first sentence there, it's -- it would  
10 be, I believe, entirely fair to read that sentence as  
11 saying that rerunning the Aurora model for a later year  
12 with later data would simply represent rerunning the  
13 model with different inputs or assumptions as  
14 contemplated by that rule.

15           If not, though, in the alternative, if it does  
16 not merely constitute that, and it requires the company  
17 to create new data or documents, the meaning of the rule,  
18 I believe that staff has shown a compelling need here.  
19 This case is really significantly concerned with power  
20 costs, the accuracy of power cost forecasts, proposed  
21 changes to the recovery of power costs that necessitate a  
22 full and complete record for the commission to have a  
23 proper decision on those issues.

24           So I would disagree that this is something  
25 that can be entirely remedied through later updates

1 during a rate plan.

2 I think that the -- based on my initial review  
3 of the evidence, the impact of the closure for the Jim  
4 Bridger full facility is a contested issue. It's  
5 contested whether the company has properly accounted for  
6 that. I'm noting Mullins, AGM-1T, page 20, is one of the  
7 exhibits addressing that issue.

8 I think staff's point that the -- that power  
9 cost forecast needs to be based on either test year or  
10 rate year periods of time is well taken. I think it's a  
11 bit late in the game to bring up that point. It's not  
12 the primary basis for what I'm ordering today. But that  
13 point is well taken.

14 And I think given all the circumstances and  
15 the merits of what's at issue in this case, there is a  
16 compelling need.

17 In Mitchell's declaration, I noted that  
18 Mitchell said that this would take at least four to six  
19 weeks to prepare this response. It looks like November  
20 23 is six weeks from today. I would give the company  
21 until November 30 to provide the updated response to Data  
22 Request 155. That includes the calendar year 2025 data  
23 as requested by staff.

24 I would also require the company, at an  
25 earlier date, the same date as rebuttal and

1 cross-answering testimonies deadline, which is, I  
2 believe, October 27, to provide a supplemental data  
3 request response to Data Request 155 addressing the  
4 removal of the ozone rule and providing that partial  
5 response earlier to staff and the other parties on  
6 October 27.

7 Are there any questions or any needs for  
8 clarification of my instructions?

9 ATTORNEY CALLAGHAN: Just briefly, your Honor.  
10 I may have missed this, but did you set a date by which  
11 the company needed to respond or provide answers to DRs  
12 152, 54, 56 and 57?

13 JUDGE HOWARD: I did. That was by 5:00 p.m.  
14 Monday, October 16.

15 ATTORNEY CALLAGHAN: Thank you.

16 ATTORNEY KUMAR: Your Honor, I just have a  
17 quick followup question. I believe that -- and the  
18 reason this wasn't raised before is I think the response  
19 hasn't been -- isn't due until next week.

20 But I believe staff DR 160 asks for, I think  
21 this sort of same model run where it shifts the dates.  
22 And we just want to ensure that the same sort of timeline  
23 considerations apply to that data request as well.

24 JUDGE HOWARD: Well, I would be -- I would be  
25 hesitant to state that formally as an order on the

1 record. But I would hope that the parties could see how  
2 I would possibly rule on that and work that out between  
3 themselves.

4 ATTORNEY KUMAR: Thank you, your Honor.

5 JUDGE HOWARD: Thank you.

6 Any other questions or anything else that we  
7 should address today before we adjourn?

8 ATTORNEY PEASE: Your Honor, I think we would  
9 just like to clarify the timing so that we make sure we  
10 have it absolutely clear. So it looks like November 30,  
11 then, is the date for responding to 155 with the 2025  
12 data; is that correct?

13 JUDGE HOWARD: Yes.

14 ATTORNEY PEASE: Okay. And then the partial  
15 update to address the ozone transport rule removal is  
16 October 27; is that correct?

17 JUDGE HOWARD: Yes. And as I recall, rebuttal  
18 cross-answering testimony is due the same day. And  
19 Mitchell indicated that that issue would be addressed in  
20 rebuttal testimony.

21 So my order on that point is merely requiring  
22 the company to provide that supplemental partial answer  
23 by that same day to staff in the data request response.

24 ATTORNEY PEASE: Thank you for that  
25 clarification.

1 JUDGE HOWARD: All right. Thank you.  
2 Anything further before we go off the  
3 record?

4 All right. Thank you all. We are adjourned.  
5 (Proceedings concluded at 2:14 p.m.)

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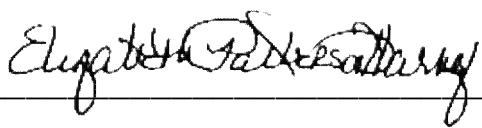

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STATE OF WASHINGTON )  
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I, Elizabeth Patterson Harvey, do hereby certify under penalty of perjury that the foregoing recorded statements, hearings, and/or interviews were transcribed under my direction as a Washington Certified Court Reporter; and that the transcript is true and accurate to the best of my ability, that I am not an employee or relative of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of October, 2023.

Elizabeth Patterson Harvey, WA CCR 2731