

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Addam Pack)
Filing Date: November 5, 2025) Case No.: WBH-25-0004

)

Issued: January 23, 2026

Order Granting In Part Motions to Compel

Kristin L. Martin, Administrative Judge

The two motions to compel before me arise from a complaint filed by Addam Pack (Complainant) against his former employer, Kiewit Power Constructors Company (Respondent), pursuant to the Department of Energy's (DOE) Contractor Employee Protection Program, at 10 C.F.R. Part 708 (Part 708). Complainant's motion to compel, filed on January 19, 2026, seeks to compel Respondent to respond to a set of interrogatories and requests for production, over the objections of Respondent. Respondent's motion to compel, filed on January 21, 2026, seeks to compel Complainant to respond to requests for production, over the objections filed by Complainant. In this order, I grant each motion in part.

I. BACKGROUND

Discovery in this case commenced on November 19, 2025. The requests for documents and interrogatories at issue today were made during a second round of discovery ordered on January 7, 2026, after Respondent objected to all of Complainant's discovery requests made during the first round of discovery, which ended on December 31, 2025. The parties were given leave to submit new or clarified discovery requests and interrogatories in hopes that discovery disputes could be resolved without judicial involvement. Each party has objected to the other's requests and filed a Motion to Compel fulfilment of its own requests. I address each in turn. The deadline for production is moved to January 30, 2026. The deadline for submission of exhibits and witness lists is moved to February 9, 2026.

II. ANALYSIS

It is well-established that “[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.” *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). Under Part 708, “[t]he Administrative Judge may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint.” 10 C.F.R. § 708.28(b)(1). Any appropriate method

of discovery may be permitted, including interrogatories and production of documents. *Id.* § 708(b)(2).

A. Complainant's Motion to Compel

As an initial matter, I turn to the question of the attorney-client privilege and the attorney work product privilege, which Respondent has invoked in many of its objections.

Attorney-client privilege is a common law doctrine addressing the protection of communications between attorneys and their clients. The “Supreme Court Standard 503,” quoted below in relevant part, restates the common law doctrine and has been a useful guide for many courts. *United States v. Moscony*, 927 F.2d 742, 751 (3rd Cir. 1991); 3 Weinstein’s Federal Evidence, Scope ch. 503 (2026).

General rule of privilege.—A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between himself or his representative and his lawyer or his lawyer’s representative, or (2) between his lawyer and the lawyer’s representative, or (3) by him or his lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client.

3 Weinstein’s Federal Evidence § 503.01 (2026). Where an attorney is not providing legal services, such as when conducting a transaction or acting as a business adviser or scribe, the privilege does not apply. *United States v. Horvath*, 731 F.2d 557, 561 (8th Cir. 1984).

The work product privilege protects from disclosure materials prepared by an attorney in anticipation of litigation. *Hickman*, 329 U.S. at 511. However, it is generally recognized that “where relevant and non-privileged facts remain hidden in an attorney’s file and where production of those facts is essential to the preparation of one’s case, discovery may properly be had.” *Id.*

At this point, because Respondent’s objections make a blanket assertion of privilege without any supporting rationale, I have no basis to rule on the assertion of privilege over any particular document or category of documents. With respect to Complainant’s discovery requests for which I overrule Respondent’s objections below, should Respondent determine that privilege applies to any responsive document(s), it should identify the document(s) and the basis for the asserted privilege in its discovery response.

Turning to the remainder of the issues, the following is a direct recitation of the discovery requests made by the Complainant, a summary of the objections raised by Respondent, and my rulings on each.

1. Identification of Termination Decision Authority:

Request: Documentation identifying the individual or individuals who made the decision to terminate the Complainant and the date on which that decision was made, or, if Respondent

contends that no individual can be identified as the termination decision-maker, documentation identifying the individual or individuals who possessed authority to terminate the Complainant during the relevant period.

Objection: Vague and Incapable of Response (The request seeks “documentation” without specifying what kinds of documents or for what time period, making it unanswerable); Attorney-Client Privilege (Responsive documents may be protected by attorney-client privilege).

Respondent’s objections are overruled. It is clear from the context of the request that Complainant seeks information regarding his own termination, which is the retaliatory act alleged in his Complaint. The documents sought are described with sufficient specificity that Respondent should have no question about the time period or types of documents that are sought.

Complainant’s Motion to Compel is granted in regard to this request.

2. Materials Considered and Decision-Maker Association

Request: Documentation reflecting the materials relied upon in connection with the termination decision, including workload information, staffing considerations, business assessments, or comparable materials, sufficient to associate the individual(s) identified in Request 1 (or Request 2, if applicable) with each such material, as reflected in ordinary-course records. The April 4, 2025 termination meeting invitation (originator and all invitees, including CC/BCC), any updated versions, any recording or notes from the meeting (if they exist), and documentation identifying who actually attended.

Objection: Attorney-Client Privilege or Work Product Doctrine (seeks information protected by attorney-client privilege or work product doctrine); Irrelevant (lacks relevance to claims, specifically “workload information, staffing considerations, business assessments” are not relevant to whether a protected disclosure was made or whether actionable retaliation occurred; “termination decision” is unspecified; April 4, 2025 meeting documents are irrelevant as attendees only transmitted a decision already made and did not make the decision themselves).

As an initial matter, Complainant is clearly referring to his own termination—he refers to the April 4, 2025, meeting at which he was terminated and, crucially, his termination is the only one at issue. In its Reply, Respondent stated that Complainant was terminated due to “lack of work.” Reply at 4 (June 25, 2025). Information relevant to such a determination might reasonably be expected to include workload information, staffing considerations, business assessments, and more. As stated in 10 C.F.R. § 708.29, Respondent has a burden “to prove by clear and convincing evidence that it would have taken the same action [termination] without the complainant’s disclosure, participation, or refusal.” The requested information is relevant to Respondent’s burden under Part 708. Similarly, while the April 4, 2025, meeting attendees may not have made the decision to terminate Complainant, it is likely that they have information about who the decision-maker was. As Respondent has not yet disclosed, either in discovery or in the investigation preceding this litigation, who made that decision, the identity of people with knowledge of who the decision-maker was is relevant to determining whether the decision-maker had actual or constructive knowledge of Complainant’s disclosures.

Complainant's Motion to Compel is granted as it relates to this request.

3. Termination Process Sequencing

Request: Documentation reflecting the sequence of the termination decision process, including initiation, internal review, approvals, and communications, as reflected in ordinary-course records created prior to or contemporaneous with the April 4, 2025, termination.

Objection: Vague and Unduly Vague (Does not define specific categories of documents; “reflecting the sequence of the termination decision process” is undefined); Irrelevant (Process of review or communication is not relevant to elements of protected disclosure, adverse action, or causal connection; the only potentially relevant portion would be documents showing the decision-makers’ knowledge of protected disclosures, which claimant does not expressly request); Attorney-Client Privilege or Work Process Privileges (Seeks documents subject to these privileges).

The plain language of this request appears to seek the “paper trail” for his termination. As previously stated, the identities of persons involved in this process are relevant for establishing whether the decision-maker had actual or constructive knowledge of Complainant’s disclosures, and testimony from these persons may be relevant to meeting Respondent’s burden as well. Complainant’s Motion to Compel is granted as it relates to this request.

4. Authorship and Direction of Termination Documentation

Request: Documentation reflecting who directed preparation of the separation documentation provided to the Complainant on April 4, 2025, how such direction was conveyed, and documentation sufficient to identify the originator of such materials, to the extent recorded outside privileged communications.

Objection: Attorney-Client Privilege and/or Work Product Doctrine (Seeks information protected by these privileges); Vague and Incapable of Response; Irrelevant (Documents “reflecting” the identity of the person who directed preparation of a proposed separation agreement are irrelevant to whether there was an adverse employment action or a causal connection, especially without proof that this person was also the termination decision-maker with knowledge of protected activities).

The requested documents are relevant to the issue of actual or constructive knowledge and to Respondent’s burden. This request is duplicative of requests 1 through 3 and, while Complainant’s Motion to Compel is granted with respect to this request, Respondents do not need to provide duplicate documents if they are produced in response to a different request. Respondent should mark all production such that it is clear which request, or requests, prompted a document’s production.

5. Termination Meeting Attendance and Roles

Request: Documentation identifying invitees, attendees, and participant roles associated with the April 4, 2025, termination meeting, including whether participation occurred virtually or in person.

Objection: Irrelevant (Attendees at the April 4, 2025, meeting did not “recommend, review, or approve” termination; they merely communicated a decision already made by others, as established in the DOE’s ROI. Thus, any information about this meeting is irrelevant); Attorney-Client Privilege or Work Process Privileges (Seeks documents subject to these privileges).

The requested documents are relevant to the issue of actual or constructive knowledge and to Respondent’s burden. This request is duplicative of requests 1 through 3 and, while Complainant’s Motion to Compel is granted with respect to this request, Respondents do not need to provide duplicate documents if they are produced in response to a different request. Respondent should mark all production such that it is clear which request, or requests, prompted a document’s production.

6. Investigation Completion Status

Request: Documentation sufficient to establish whether any investigation concerning the Complainant’s disclosures was completed prior to the termination decision and, if so, documentation reflecting any factual findings generated prior to termination and the individual(s) who reviewed those findings.

Objection: Vague and Ambiguous (Does not specify which disclosures or the meaning of “investigation”); Attorney-Client Privilege or Work Process Privileges (Seeks documents subject to these privileges); Irrelevant (Whether any follow-up actions occurred is not relevant to elements of a claim under 10 C.F.R. § 708.5, as it does not establish a protected disclosure, adverse action, or causal link; the only relevant inquiry is decision-makers’ knowledge of protected disclosures; documentation on potential investigation status is irrelevant and unduly burdensome).

It is not clear what relevance an investigation into Complainant’s disclosures, or its subsequent finding, has to the burdens laid out in Part 708. The objection to this request on the basis of relevance is sustained. Complainant’s Motion to Compel is denied as it relates to this request.

7. Decision to Proceed with Termination Prior to Investigation Completion

Request: If Respondent contends that the investigation was incomplete at the time of termination, documentation identifying: a. the individual(s) who decided to proceed with termination notwithstanding non-completion; b. the date on which that decision was made; and c. documentation reflecting the basis for that decision as reflected at the time.

Objection: Incorporates Objections to Request No. 6.

To the extent that this request seeks to identify the person who decided to terminate Complainant, the requested documents are relevant to the issue of actual or constructive knowledge and to Respondent’s burden. This request is duplicative of requests 1 through 3 and, while Complainant’s Motion to Compel is granted, in this limited scope, with respect to this request, Respondent does not need to provide duplicate documents if they are produced in response to a different request.

8. Policy Compliance Determination

Request: Documentation reflecting whether termination under the circumstances described in Request 7 was assessed for compliance with applicable company policy, and documentation reflecting how that assessment was conducted.

Objection: Vague (Term “under the circumstances” is undefined); Attorney-Client Privilege or Work Product Doctrine (Seeks documents subject to these doctrines); Irrelevant (Internal compliance with company policy is not an element of a whistleblower retaliation claim; the relevant inquiry is decision-makers’ knowledge of protected disclosures; 10 C.F.R. § 708 process is not a forum to litigate general employment policies or compliance).

The requested documents are relevant to the issue of actual or constructive knowledge and to Respondent’s burden. This request is duplicative of requests 1 through 3 and, while Complainant’s Motion to Compel is granted with respect to this request, Respondents do not need to provide duplicate documents if they are produced in response to a different request. Respondent should mark all production such that it is clear which request, or requests, prompted a document’s production.

9. Timing of Legal Awareness

Request: Documentation reflecting when legal counsel first became aware of the existence or content of the Complainant’s protected disclosures prior to termination.

Objection: Attorney-Client Privilege and Work Product Doctrine (Seeks protected information); Overbroad and Unduly Burdensome (No reasonable limitation in scope or time); Legal Conclusion (Use of “protected disclosure” is a legal conclusion respondent disputes); Vague (Term “legal counsel” is undefined for a large company with many counsel, making it impossible to respond); Irrelevant (Documents are not relevant to elements of 10 C.F.R. § 708.5 claims or § 708.29 burdens of proof).

The date on which Respondent’s internal legal team learned of Complainant’s disclosures is relevant to the question of actual or constructive knowledge. Complainant’s Motion to Compel is granted as it relates to this request.

10. Post-Awareness Communications

Request: Non-privileged documentation reflecting communications occurring after legal awareness of the disclosures and prior to termination bearing on employment status, staffing, or work availability.

Objection: Vague and Ambiguous (Phrase “legal awareness” is undefined); Hopelessly Vague and Incapable of Response (Does not identify which persons are sought for “non-privileged” documents); Overbroad and Unduly Burdensome (Seeks all “documentation reflecting communications” between “legal awareness” and termination “bearing on employment status, staffing, or work availability” presumably for all employees); Irrelevant (Communications “bearing on employment status, staffing, or work availability” are not relevant to elements of 10 C.F.R. § 708.5 claim, as the only relevant inquiry is decision-makers’ knowledge of protected disclosures).

The entirety of Respondent's communication on staffing and work availability, etc., is likely voluminous and largely irrelevant to this proceeding. However, such communication regarding work or staffing relating to Complainant's position at the company, *i.e.* industrial hygiene and safety, may be relevant to Respondent's burden, and therefore, I narrow the scope of the request accordingly. While the term "legal awareness" is not defined, in context of the previous request, it is clear that Complainant meant after the date on which Respondent's legal counsel became aware of Complainant's disclosures. With these parameters and limited scope in mind, Complainant's Motion to Compel is granted as it relates to this request.

11. November 18, 2024, District Safety Meeting

Request: The audio recording or transcript of the November 18, 2024, District Safety Meeting from approximately 38:49 through the conclusion of the meeting and relevant to managerial attitude and safety culture contemporaneous [to] the environment in which my Complain[er]'s concerns were received, if such recording or transcript exists.

Objection: Irrelevant (Unclear how "managerial attitude" and "safety culture" are relevant to 10 C.F.R. § 708.5 claim elements; only relevant inquiry is decision-makers' knowledge of protected disclosures and causal connection; none of the attendees were responsible for the termination decision).

Complainant has asserted in a separate filing that statements were made at this meeting which support his assertion that his disclosures were a contributing factor in the decision to terminate him. Complainant's Request for Subpoena at 2 (Jan. 9, 2026). The requested production is therefore relevant to Complainant's burden, as well as to Respondent's burden to establish that it would have terminated Complainant, notwithstanding his disclosures. Complainant's Motion to Compel is granted as it relates to this request.

12. Access and Routing Metadata

Request: Documentation reflecting access to, receipt of, or handling of each of the Complainant's Centrio submissions, including timing of access, viewer identity, and subsequent routing.

Objection: Privileged Communications or Attorney-Client Privilege and Work Product Doctrine (Seeks protected information); Irrelevant (General "access to, receipt of, or handling of each of Complainant's Centrio submissions" is irrelevant); Overbroad, Unduly Burdensome, and Not Proportional (Seeks all "access and routing metadata" related to an undefined and unduly vague universe of documents; the only relevant inquiry is decision-makers' actual or constructive knowledge prior to termination).

Respondent argues that this request seeks "an undefined and unduly vague universe" of documents. On the contrary, the request is limited to a finite amount of information: the metadata for Complainant's Centrio submissions. It is reasonably specific in scope. Furthermore, it is relevant to showing actual or constructive knowledge of disclosures. Complainant's Motion to Compel is granted as it relates to this request.

13. Project and Craft Labor Hours

Request: Documentation reflecting total KNS employee hours worked and total KNS craft labor employee hours worked per month or per pay period at the SFHP project site from January 1, 2025, through the present, in any summary or reporting format routinely maintained.

Objection: Overbroad, Unduly Burdensome, and Not Proportional (Seeks all “documentation reflecting total KNS employee hours worked and total KNS craft labor employee hours worked per month or per pay period” at the SFHP project site; the only potentially relevant inquiry is decision-makers’ actual or constructive knowledge prior to termination).

The hours worked by all Kiewit employees, even if limited to craft employees, is not relevant as to whether there was work available for Complainant. The objection to this request on the basis that it is overbroad is sustained without affecting the narrower category permitted in request 14. Complainant’s Motion to Compel is denied as it relates to this request.

14. Safety / IH Function Man-Hours

Request: Documentation reflecting the total number of KNS employee hours worked per month or per pay period by personnel performing safety or industrial hygiene compliance functions at the SFHP project site from January 1, 2025[,] through the present, as reflected in staffing, timekeeping, or labor-coding records.

Objection: Overbroad and Unduly Burdensome (Seeks all documentation for more than a one-year period); Vague and Ambiguous (Reference to “personnel performing safety or industrial hygiene compliance functions” is unclear as to which employees/job titles and specific types of records); Irrelevant (The only potentially relevant inquiry is decision-makers’ actual or constructive knowledge prior to termination).

Because Respondent argues that Complainant was terminated due to lack of work, staffing information and hours work information for positions in Complainant’s field are relevant to Respondent’s burden. However, the request is too broad in that it seeks a wealth of information not related to Complainant’s field and for a longer time period than is relevant for this hearing. The scope of the request is limited to industrial hygiene positions from January 1, 2025, through May 30, 2025. With these limitations, Complainant’s Motion to Compel is granted as it relates to this request.

15. Staffing Adjustments

Request: Documentation reflecting any anticipated or actual staffing increases, decreases, reassignments, or deferrals affecting SFHP craft labor or safety or health personnel from January 1, 2025 through the present, as reflected in workforce planning, staffing, or demobilization records maintained in the ordinary course of business.

Objection: Overbroad and Unduly Burdensome (Seeks “any anticipated or actual staffing increases, decreases, reassignments, or deferrals affecting SFHP craft labor or safety or health personnel from January 1, 2025 through the present,” not limited to specific positions, departments,

or time periods); Vague and Ambiguous (Terms “anticipated or actual staffing increases, decreases, reassessments, or deferrals” are undefined and subject to varying interpretations); Irrelevant (The only potentially relevant inquiry is decision-makers’ actual or constructive knowledge prior to termination).

Because Respondent argues that Complainant was terminated due to lack of work, staffing information for positions in Complainant’s field is relevant to Respondent’s burden. However, the request is too broad in that it seeks a wealth of information not related to Complainant’s field and for a longer time period than is relevant for this hearing. The scope of the request is limited to industrial hygiene positions from January 1, 2025, through May 30, 2025. With these limitations, Complainant’s Motion to Compel is granted as it relates to this request.

16. CS-113 Safety Role Requirement and Appointment Status

Request: Documentation sufficient to identify whether Project CS-113 required or was planned to require assignment of a primary safety or health management function (including but not limited to a Safety Manager or equivalent role), and the individual or individuals assigned or planned to be assigned to that function, including the date each such requirement or assignment determination was made.

Objection: Vague and Ambiguous (Terms “primary safety or health management function,” “equivalent role,” and “assignment determination” are undefined and subject to varying interpretations); Lacks Temporal Limitations; Irrelevant (Documents showing “individuals assigned or planned to be assigned” to Project CS-113 are not relevant to elements of a 10 C.F.R. § 708.5 claim, as the only relevant inquiry is decision-makers’ knowledge of protected disclosures).

Because Respondent argues that Complainant was terminated due to lack of work, staffing information for positions in Complainant’s field is relevant to Respondent’s burden. However, determinations made long after Complainant’s termination have little bearing on the case at hand. The scope is limited to the time period of November 1, 2024, through April 30, 2025, Complainant’s Motion to Compel is granted as it relates to this request.

17. Safety and Industrial Hygiene Workload and Staffing Status

Request: Documentation sufficient to establish whether, at or prior to the April 4, 2025 termination decision, Respondent determined that no safety or industrial hygiene work was available at the SFHP project site for which the Complainant was qualified, including documentation identifying: a. the individual or individuals who made that determination; b. the date on which the determination was made; and c. the basis for concluding that no such safety or industrial hygiene work was available or expected to be available as recorded at the time.

Objection: Irrelevant (Documents showing when “Respondent determined that no safety or industrial hygiene work was available at the SFHP project site” or the basis of the decision are not relevant to elements of a 10 C.F.R. § 708.5 claim, as the only potentially relevant inquiry is decision-makers’ knowledge of protected disclosures; review of overall personnel decisions is outside OHA jurisdiction without proof of prior knowledge; lacks temporal limitations).

Because Respondent argues that Complainant was terminated due to lack of work, staffing information for positions in Complainant's field is relevant to Respondent's burden. Complainant's Motion to Compel is granted as it relates to this request.

18. Privilege Identification

Request: Privilege-log documentation sufficient to identify each document or portion of a document withheld or redacted on the basis of attorney-client privilege, identifying the asserted privilege, the date of the material, the author(s), recipient(s), and any segregable non-privileged factual content.

Objection: Overbroad, Lacks Temporal Scope, Unduly Burdensome, and Not Proportional (Seeks "each document or portion of a document withheld or redacted on the basis of attorney-client privilege"); Factual Condition Precedent (Respondent has not yet withheld or redacted any documents on this basis, making the request premature); Irrelevant (No proof or allegation that any such document was created by or sent to a decision-maker or contained information on protected disclosures/adverse action).

A privilege log is a reasonable, and common, request when a litigant redacts or objects to the production of documents pursuant to privilege. *See Am. Bar Ass'n, Crafting Effective Privilege Logs for Legal Success, Bus. L. Today* (Nov. 7, 2024), https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-november/crafting-effective-privilege-logs-legal-success/. The scope of the request is defined: if Respondent has asserted privilege to redact or withhold a document, they must describe the document and assert the specific privilege invoked. That is a finite universe defined by Respondent's actions.

Complainant's Motion to Compel is granted as it relates to this request.

19. Trade Secret and Conditional Withholding Process

Request: Non-privileged documentation sufficient to establish: a. the individual(s) who determined that trade-secret, business-sensitive, § 1905, or similar protection may apply to specific responsive materials and the factual, legal, or policy basis relied upon at the time; b. the individual(s) who authorized conditional or provisional withholding or redaction of such materials prior to any final determination; c. whether any subsequent review or evaluation of the asserted protection was undertaken and, if so, the date(s), decision-maker(s), and non-privileged basis for any conclusion reached; d. if no final determination has been made, who decided to continue withholding the material, the basis for doing so, and whether further evaluation is planned or has been declined; and e. the current status of the withheld material as of the date of Respondent's response, including whether it is withheld pursuant to a final determination, a continuing conditional determination, or no determination, and, if protection is no longer asserted, production of the material or documentation explaining why production has not occurred.

Objection: Overbroad and Unduly Burdensome (Attempts to invade attorney work product and professional judgment; seeks detailed documentation regarding internal decision-making processes for withholding materials based on trade secret/business-sensitive protections); Irrelevant (Such information is not relevant to the elements of a 10 C.F.R. § 708.5 claim; documents redacted were

non-public construction documents, not subject to trade-secret/business-sensitive protection from Claimant; factual and legal condition precedent for this request does not exist).

It is not clear what the relevance of this request is. The identity of the person making litigation decisions for this discovery process is not relevant to the various burdens laid out in Part 708. The objection to this request on the basis of relevance is sustained. Complainant's Motion to Compel is denied as it relates to this request.

B. Respondent's Motion to Compel

Respondent's discovery requests and summaries of Complainant's objections to them are listed below. I address them categorically.

1. Interrogatories

a. Interrogatory No. 1:

Request: Identify and describe in detail all Job Search Efforts you undertook from April 4, 2025 to the present, including all Communications you had with each Prospective Employer for the purpose of seeking employment.

Objection: Prematurity; Overbreadth; Disproportionate to Case Need; Speculation or Memory Reconstruction; Non-Party Privacy; Employment-Security Concerns (Seeks information relevant only to remedies before liability is determined, requires reconstruction of events, and disclosure of non-party information).

b. Interrogatory No. 2:

Request: Identify and describe in detail all Alternative Employment you have held from April 4, 2025 to the present including, but not limited to, the name of your employer, work location, position title, and federal or federally-funded facility or project name (to the extent applicable).

Objection: Prematurity; Irrelevance; Disproportionate to the Needs of the Case; Non-Party Privacy; Employment-Security Concerns (Seeks information that does not bear on liability and implicates privacy and security concerns not necessary to address at this stage).

c. Interrogatory No. 3:

Request: For each Alternative Employment you have held, identify and describe in detail all Compensation you received or earned from April 4, 2025 to the present, as well as your annualized Compensation for each Alternative Employment.

Objection: Prematurity; Disproportionate to the Needs of the Case; Speculative or Contingent Relevance (Seeks information for a remedies analysis that depends on future determinations and is not required to resolve liability).

d. Interrogatory No. 4:

Request: Identify and describe in detail all vacations and other uncompensated time off you voluntarily took from April 4, 2025 to the present.

Objection: Prematurity; Irrelevance; Disproportionate to the Needs of the Case (Seeks information relevant only to remedies, which are not at issue at this stage).

e. Interrogatory No. 5:

Request: Identify each expert witness you may call to testify in this matter and describe, in detail, all opinions each expert is expected to testify about and all facts and Documents provided to such expert upon which he/she will base any purported expert testimony.

Objection: Prematurity; Outside the Scope of Authorized Discovery (Seeks identification of witnesses prior to the deadline established by the ALJ). Complainant states that no expert witnesses have been identified.

f. Interrogatory No. 6:

Request: Identify and separately describe in detail each category of 10 C.F.R. § 708.36 remedies you are seeking in this matter. For each category of remedies identified that have a monetary component, provide a detailed calculation of how you arrive at any monetary remedy amount and identify all Documents upon which you base such calculations. For each category of remedies identified that do not have a monetary component, please identify and describe in detail the factual basis or justification for such claimed remedy.

Objection: Prematurity; Improper Burden Shifting; Speculative or Contingent Relevance (Seeks analysis reserved for the remedies phase, which presupposes liability).

2. Requests for Production

a. Request for Production 1:

Request: Produce all Documents and Communications Concerning each of your Job Search Efforts identified in Interrogatory No. 1.

Objection: Prematurity; Overbreadth; Disproportionate to the Needs of the Case; No Responsive Documents Exist; Non-Party Privacy (Seeks materials not necessary for liability adjudication that were not created or maintained).

b. Request for Production 2:

Request: Produce all Documents and Communications including, but not limited to, offer letters, position descriptions, employment agreements, benefits descriptions, pay checks, pay stubs, W-2 tax forms, and all other Documents Concerning Compensation earned by you at each Alternative Employment identified in Interrogatory No. 2 or relied upon in answering Interrogatory No. 3 above.

Objection: Prematurity; Disproportionate to the Needs of the Case; Non-Party Privacy; Employment-Security Concerns (Seeks records relevant only to remedies and not required at this stage of the proceeding).

c. Request for Production 3:

Request: Produce all expert reports prepared by each expert you identify in Interrogatory No. 5 above.

Objection: No Responsive Documents Exist.

d. Request for Production 4:

Request: Produce all Documents and Correspondence that you contend support your computation of any 10 C.F.R. § 708.36 remedies you are seeking in this matter that have a monetary component.

Objection: Prematurity; Speculative or Contingent Relevance (Seeks documents that depend on future findings).

e. Request for Production 5:

Request: Produce all Documents and Communications that you contend support your claim for any 10 C.F.R. § 708.36 remedies you are seeking in this matter that do not have a monetary component.

Objection: Prematurity; Speculative or Contingent Relevance (Seeks justification for remedies prior to any determination of liability).

Respondent's discovery requests pertain primarily to remedies. However, this proceeding will be bifurcated. *See, e.g., Denise Hunter*, OHA Case No. WBH-12-0004, 2013 EOHA LEXIS 11 *44–45 (Aug. 5, 2013). Remedies will be considered only after a determination that an act of retaliation has occurred. In the event that I make such a determination, the parties will be afforded time for discovery, briefing, or, potentially, a hearing on the issue of remedies. Respondent's Motion to Compel is timely, but as I have not determined whether an act of retaliation has occurred, there is no need to produce remedy-related discovery at this time. Respondent's motion is denied at this time, with leave to re-file if necessary at a later date.

Respondent's Motion to Compel also argues that the requested information is relevant because the way Complainant described his time at Kiewit to prospective employers could be relevant to the question of Complainant's alleged reasonable belief that his disclosures pertained to violations of law, rule, or regulation. Respondent's Motion to Compel at 3 (Jan. 21, 2026). The question of reasonable belief is specific to the time of the disclosure; it is irrelevant whether the complainant believed later, reasonably or otherwise. Complainant's employment activities after termination have no bearing on whether he reasonably believed, at the time of disclosure, that he disclosed a

violation of law, rule, or regulation. *Erik DeBenedictis*, OHA Case No. WBA-20-0003, 2020 EOHA LEXIS 102 *10 (Dec. 16, 2020).

Complainant objected to Interrogatory 5 as seeking identification of witnesses prior to the deadline for submitting witness lists to the court and stated that he has not engaged any experts. Complainant objected to Request for Production 3 on the basis that no documents exist, presumably because, as yet, he has not engaged any experts. Complainant may yet engage an expert before the deadline for witness lists. In the event that he does so, he must supplement his discovery responses by responding to Interrogatory 5 and Production Request 3 by the date witness lists are due.

III. CONCLUSION

After reviewing the Motions to Compel, I find that each should be granted in part.

It is Therefore Ordered That:

- (1) The Motion to Compel filed by Kiewit Power Constructors Co. on January 21, 2026, is hereby (A) granted with respect to Interrogatory 5 and Request for Production 3, and (B) denied in all other respects.
- (2) The Motion to Compel filed by Addam Pack on January 19, 2026, is hereby (A) granted with respect to Requests 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 18, pursuant to the restrictions contained in this document, and (B) denied in all other respects. Respondent should mark all production such that it is clear which request, or requests, prompted a document's production.
- (3) The parties will be provided an opportunity for discovery, briefing, or a hearing, as determined appropriate, on the issue of remedies if it is determined that an act of retaliation has occurred.
- (4) This is an Interlocutory Decision of an Administrative Judge which can be appealed upon the issuance of an initial agency decision of the Department of Energy.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals