

Docket No. UE-220376 - Vol. III

WUTC v. Pacificorp dba Pacific Power & Light Company

January 26, 2023



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND) DOCKET UE-220376
TRANSPORTATION COMMISSION,)
))
Complainant,))
))
vs.))
))
PACIFICORP, d/b/a PACIFIC)
POWER & LIGHT COMPANY,)
))
))
Respondent.)

VIRTUAL SETTLEMENT CONFERENCE, VOLUME III

Pages 44-124

ADMINISTRATIVE LAW JUDGE ANDREW J. O'CONNELL

January 26, 2023

9:30 a.m.

Washington Utilities and Transportation Commission
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1 LACEY, WASHINGTON; JANUARY 26, 2023

2 9:30 A.M.

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4 P R O C E E D I N G S

5

6 JUDGE O'CONNELL: Let's be on the record.

7 Good morning. The time is approximately
8 9:35 a.m. on January 26, 2023.

9 My name is Andrew O'Connell. I am an
10 administrative law judge with the Washington Utilities
11 and Transportation Commission and -- I'm sorry -- I am
12 presiding in this matter, Docket UE-220376.

13 And this proceeding concerns a complaint
14 issued by the Commission through its Staff, alleging
15 violations by PacifiCorp of statute rule and Commission
16 order.

17 On December 1, Commission Staff filed the
18 motion to withdraw the complaint in this proceeding
19 along with the settlement agreement to withdraw Staff's
20 complaint.

21 On December 23, the Public Counsel unit of
22 the Washington Attorney General's Office filed its
23 response in opposition to Staff's motion and the
24 settlement agreement.

25 We're here today for a hearing on Staff's

1 motion and settlement agreement.

2 Let's move forward with appearances. Please
3 tell me how you would like me to address you during this
4 hearing. For me, you can use he/him pronouns and
5 address me as Judge or Judge O'Connell.

6 Okay. Let's start with Commission Staff.

7 MR. CALLAGHAN: Thank you, Your Honor. Nash
8 Callaghan, Assistant Attorney General for Commission
9 Staff. My pronouns are he/him. With me today is Andrew
10 Rector on behalf of Commission Staff.

11 JUDGE O'CONNELL: Thank you.

12 And for PacifiCorp.

13 MR. ROGALA: Good morning, Your Honor. Zach
14 Rogala, in-house counsel for PacifiCorp. Pronouns are
15 he/him, and with me today we have subject matter expert
16 Rohini Ghosh. Happy to be here and be helpful to the
17 extent we can.

18 JUDGE O'CONNELL: Okay. Thank you.

19 And for Public Counsel.

20 MS. PAISNER: Good morning, Your Honor.
21 This is Ann Paisner. I am an assistant attorney general
22 with the Public Counsel Unit of the Washington State
23 Attorney General's Office, and here with me today is our
24 witness, Stephanie K. Chase, who is a regulatory analyst
25 with Public Counsel. I use she/her pronouns and can be

1 addressed as Ms. Paisner. Thank you.

2 JUDGE O'CONNELL: Thank you.

3 And for the Alliance of Western Energy
4 Consumers.

5 MS. MOSER: Good morning, Your Honor.
6 Sommer Moser on behalf of Alliance of Western Energy
7 Consumers. Oh, I apologize. My pronouns are she/her,
8 and you can address me as Ms. Moser.

9 JUDGE O'CONNELL: Thank you.
10 For Sierra Club.

11 MS. MONAHAN: Good morning, Your Honor.
12 Rose Monahan on behalf of Sierra Club. I use she/her
13 pronouns, and with me today is Brad Cebulko, who's a
14 consultant on behalf of the Sierra Club in case Your
15 Honor should have any questions.

16 JUDGE O'CONNELL: Thank you.
17 And for Northwest Energy Coalition.

18 MS. MCCLOY: Good morning, Your Honor.
19 Lauren McCloy on behalf of Northwest Energy Coalition.
20 I'm the policy director. I use she/her pronouns, and I
21 am appearing with no counsel today.

22 JUDGE O'CONNELL: Okay. Thank you very
23 much.

24 You can now all turn off your cameras unless
25 you are speaking or presenting or would like to be

1 heard. Thank you.

2 Let me begin with how I expect us to proceed
3 today. I plan to invite the parties to present their
4 positions on the motion and the settlement agreement. I
5 will start with inviting Staff and then PacifiCorp,
6 AWEC, Sierra Club, and NWECC.

7 Last, I want to hear from Public Counsel and
8 their position.

9 So I do expect to hear from Staff and
10 PacifiCorp on the motion and on the settlement agreement
11 in the short presentation.

12 For the other parties, I am leaving it open
13 optionally, if you had prepared any remarks that you
14 would like to make before we proceed on with testimony
15 from witnesses.

16 So after the presentations, I will have some
17 questions for counsel or their representatives of Staff,
18 PacifiCorp, and Public Counsel.

19 And throughout the hearing, most of my
20 questions will be directed towards Staff because this is
21 Staff's motion. But there are certain questions that I
22 have that might benefit from having input from the other
23 parties and, in particular, PacifiCorp. And I will
24 indicate those questions. I think PacifiCorp can help
25 add some answers, too, when we get to those.

1 Let me -- let me return to the schedule. So
2 after I have questions for counsel and the
3 representatives, I will then have questions to direct to
4 witnesses for the settling parties, in particular, the
5 witnesses from Staff and PacifiCorp. And I will then
6 also have very few questions for Public Counsel's
7 witness.

8 Last, I will invite counsel and
9 representatives for the parties to provide any last
10 thoughts and closing statements.

11 Are there any questions about the schedule
12 for the hearing before we get started?

13 Okay. Hearing nothing. Let me ask Staff to
14 please turn on a camera.

15 Thank you, Mr. Callaghan, and begin with the
16 short presentation or statement, Staff, on your motion.

17 MR. CALLAGHAN: Thank you, Your Honor. The
18 issue before the Commission today is whether to grant
19 Staff's motion to dismiss a formal complaint that Staff
20 itself brought.

21 The motion is either supported or not
22 opposed by all parties in this docket, with the
23 exception of Public Counsel. Public Counsel's rationale
24 for opposing this motion is twofold.

25 First, Public Counsel argues in its response

1 that the motion to dismiss should be denied because the
2 agreement does not include penalties. Public Counsel
3 argues that if this proceeding were to continue on to
4 litigation, the Commission would likely assess penalties
5 against the Company and, therefore, the motion should be
6 denied.

7 Second, Public Counsel argues that there is
8 insufficient evidence in the record to support a finding
9 that granted the motion is in the public interest.

10 With respect to Public Counsel's first
11 argument, even if this agreement were to be considered a
12 settlement agreement on the merits under 480-07-740, the
13 notion that it should be rejected because things may
14 turn out differently if this case were to be fully
15 litigated is questionable.

16 The whole point of settlement is to
17 efficiently resolve matters and reduce risk and
18 uncertainty in litigation.

19 Public Counsel is essentially asking the
20 Commission to conclude that it is so likely that the
21 Commission would find both violations and assess
22 penalties if this proceeding were to be fully litigated
23 that despite the resolution reached by the other parties
24 and despite the Commission's policy favoring settlement
25 agreements, this proceeding should continue.

1 Second, Public Counsel's response ignores
2 that the agreement and the motion are not a resolution
3 of the merits of the formal complaint. Granting a
4 motion to dismiss is not a ruling on the merits, and the
5 agreement does not purport to be a resolution of the
6 merits. In other words, the parties supporting the
7 motion are not asking the Commission to conclude whether
8 or not the portfolio included in either the final CEIP
9 or the portfolio that would be included in the proposed
10 refile is compliant with statute or Commission rule.

11 Finally, Public Counsel's second argument is
12 that there is insufficient evidence in the record to
13 support granting the motion. Staff disagrees. Staff's
14 testimony in this docket lays out the rationale for
15 refileing the preferred portfolio using the P02-SCGHG as
16 the basis, and the motion to dismiss explains why the
17 agreement does not include penalty.

18 Give the competing concerns related to the
19 delay in the CEIP itself -- docket itself, there is
20 ample evidence to support the motion to dismiss. Thank
21 you.

22 JUDGE O'CONNELL: Okay. Thank you very
23 much.

24 Let me -- before I get to questions, let me
25 first ask if PacifiCorp has prepared an opening

1 statement, and I invite you to turn on your video.

2 MR. ROGALA: Thank you, Your Honor. Just a
3 brief opening statement. Yes, Zach Rogala for the
4 Company here. Just two quick points.

5 One, just a quick level set for the
6 proceeding. From the Company's perspective, we're -- we
7 remain excited to keep working with Staff and the
8 Commission on meeting our goals of CETA and these
9 ambitious decarbonization targets. And we just want to
10 make clear that we're on track to a 69 percent reduction
11 of emissions from our 2005 levels by 2030. That's a
12 monumental reduction in emissions, and we look forward
13 to continuing to work with Washington on this, you know,
14 significant transition of our generation portfolio.

15 But along that path, we've had disagreements
16 on how exactly the Commission and the Company agree that
17 the Company should be incorporating the social cost of
18 greenhouse gases and its clean energy implementation
19 plan. And I just want to note that this issue is about
20 as complex and techocratic as a contested case dispute
21 could be before the Commission, and we want to thank
22 Staff and the other parties who joined the settlement
23 agreement in being able to resolve this issue, I think,
24 amicably. I think this is a good example of how the
25 regulatory process works well, and we look forward to

1 continuing to work with the Commission and Staff and
2 stakeholders in the refile CEIP docket, if the
3 Commission were to approve Staff's motion.

4 Because this is a complex issue and we look
5 forward to continuing that discussion, you know, not
6 just in this next docket, but also over the next two
7 decades as we try and implement these important but also
8 complicated issues.

9 Second point is I just want to reiterate
10 what Mr. Callaghan noted earlier that this is a pretty
11 narrow scope hearing. At least from my perspective, you
12 know, the Commission's decision today is trying to
13 determine whether it should give its permission to Staff
14 to withdraw Staff's own complaint. And that permission
15 is based on a finding that the motion withdraw is in the
16 public interest.

17 I think there's ample arguments that we
18 could provide for why the motion should be granted
19 because it's in the public interest. And primarily,
20 rely on the fact that this is an example of how the
21 regulatory process should work. If you have an issue of
22 first impression, if you have a complex issue where
23 there's a zone of compliance, there's not a specific
24 methodology that is required, the Commission's expert
25 Staff should be able to work with the parties to resolve

1 issues. So that way, they don't have to be resolved
2 with the contested case decision and potentially create
3 precedent for some of the other utilities in the state.

4 So we think there's ample evidence for a
5 finding of public interest here, and I'm happy to answer
6 any questions that Your Honor has. And I'll stop there.

7 JUDGE O'CONNELL: Okay. Thank you.

8 Let me invite the representatives from
9 either AWEC, Sierra Club, or NWECC. Would any of these
10 parties like to make an opening statement or comment?

11 I see Ms. Monahan. Please go ahead.

12 MS. MONAHAN: Thank you, Your Honor. I will
13 also keep these comments brief, but I wanted to put on
14 the record that Sierra Club supports approval of a
15 settlement agreement. We believe that it achieves a
16 filing that utilizes the social cost of greenhouse gas
17 in PacifiCorp's preferred CEIP portfolio without
18 foreclosing other options for incorporating the social
19 cost of greenhouse gas in future filings.

20 As was just mentioned, this is a complex
21 issue that the parties worked, you know, quite -- quite
22 hard to resolve.

23 Another aspect of the settlement that I
24 wanted to raise up is that it requires that PacifiCorp
25 file further explanation for how the social cost of

1 greenhouse gas is incorporated into the P02-SCGHG
2 portfolio as well as the original preferred portfolio
3 that PacifiCorp filed. And Sierra Club strongly
4 believes that having that information on the record will
5 be extremely useful to both the Commission and
6 stakeholders in the future CEIP filings. Thank you.

7 JUDGE O'CONNELL: Okay. Is there a
8 representative from AWEC or NVEC who would like to make
9 an opening statement? Again, it's an invitation, not a
10 requirement, but I wanted to provide that opportunity.

11 I'm hearing nothing and I'm seeing nothing.
12 So let me turn to Public Counsel and ask Ms. Paisner,
13 would you please go ahead and present on Public
14 Counsel's position in this matter. Go ahead.

15 MS. PAISNER: Yes, thank you, Your Honor.
16 Thank you for the opportunity for us to clarify our --
17 our position today. It is slightly different from how
18 the AGC Staff characterized it just a bit ago.

19 We are here today to oppose the
20 December 1, 2022 settlement agreement among the UTC
21 Staff, PacifiCorp, Sierra Club, and the Northwest Energy
22 Coalition. Public Counsel is also here to oppose the
23 associated December 1, 2022 Staff motion to withdraw the
24 June 6, 2022 complaint against PacifiCorp, in which the
25 UTC Staff proposed maximum penalties for alleged

1 violations of the legal requirements for inclusion of
2 social cost of greenhouse gas, SCGHG, and PacifiCorp's
3 Clean Energy Implementation Plan or CEIP.

4 The alleged violations include failing to
5 meet requirements stated in the CETA statute, the
6 Commission rules implementing CETA, and the Commission
7 Order 01 in Docket UE-210829.

8 Public Counsel opposes the settlement and
9 the motion to withdraw the complaint because neither of
10 these filings is adequately supported in the record, and
11 both filings are contrary to the public interest.

12 First, with regard to the settlement
13 agreement, the UTC regulations at WAC 480-07-740 and
14 WAC 480-07-750 state Commission rules for all settlement
15 agreements and set forth a standard that settlement
16 agreements must comply with the law, must include
17 sufficient supporting documentation, and must be in the
18 public interest.

19 The settlement agreement was filed without
20 any attached supporting documentation as required under
21 WAC 480-07-740, sub (3), sub (a).

22 In addition, the record in both this docket
23 and the UE-210829 docket is devoid of any evidence
24 showing any action by PacifiCorp to correct violations
25 alleged in Staff's June 6, 2022 complaint.

1 The settlement agreement is contrary to the
2 public interest by proposing withdrawal of the complaint
3 for penalties, despite a record that continues to show
4 the legal requirements for SCGHG and CEIP preferred
5 portfolios are not met, and the maximum penalties are,
6 in fact, justified.

7 Second, with regard to the motion to
8 withdraw the complaint, Commission rules at
9 WAC 480-07-380, sub (3) state the Commission will grant
10 a motion to withdraw a complaint in a proceeding
11 pursuant to Chapter 3405 RCW when the request to
12 withdraw is in the public interest.

13 The complaint in this docket alleges
14 violations of CETA, the Commission's own rules, and
15 Order 01 and Docket UE-210829 regarding the CAP
16 requirements for SCGHG.

17 These requirements, among others in CETA and
18 the associated Commission regulations, are important to
19 meeting Washington's climate goals and doing so with
20 more equitable outcomes. If these CETA requirements are
21 not met, other similar violations could lead to
22 incorrect incremental cost calculations and different
23 resource selections, which contradicts the climate goals
24 in CETA to be set forth in utility CEIPs in the future
25 for this utility and for other utilities.

1 Lastly, as indicated in our RCW 34.05.461,
2 sub (3) and sub (4), there must be a basis in the record
3 before, not after, the Commission issues a decision
4 granting withdrawal of this complaint.

5 So in sum, PacifiCorp must comply with the
6 law for inclusion of SCGHG in their CEIP before the
7 Commission's -- before the UTC complaint can be
8 withdrawn, not after. It is PacifiCorp's responsibility
9 to show that it has complied with the law.

10 Staff witness Rector's testimony in
11 Exhibit ASR-1T has not been withdrawn, remains in the
12 record for this docket. Nothing in this docket has been
13 filed to contradict any of the statements made in that
14 testimony that support the complaint and not to withdraw
15 it.

16 Therefore, the Commission should reject the
17 settlement agreement, deny the motion to withdraw the
18 complaint, and schedule -- set a schedule in this docket
19 for the remainder of the adjudication. Thank you.

20 JUDGE O'CONNELL: Okay. Thank you very much
21 for that.

22 I do have several questions for counsel, and
23 they go along the lines of what the parties presented
24 on.

25 Before we get to -- I do have a number of

1 questions for Staff, but before I get to Staff, I want
2 to ask Ms. Monahan to please turn on your camera again.
3 Thank you.

4 You mentioned something that I wanted to
5 follow up on because I am very interested. The
6 determination is whether granting the motion to withdraw
7 is going to be in the public interest, and you mentioned
8 that having information on the record, both about the
9 current CEIP and an updated revised CEIP, will benefit
10 the parties and the public in the future and the
11 Commission in the future for that comparison.

12 Can you maybe explain that a little bit more
13 and tell me if that is one of benefits that you see
14 coming from this if the motion is granted.

15 MS. MONAHAN: Yes, Your Honor. To expand
16 upon that a bit, so part of the settlement agreement
17 requires that PacifiCorp provide a very detailed
18 explanation for how the social cost of greenhouse gas is
19 incorporated into the P02-SCGHG portfolio, which is
20 proposed to be refiled as the preferred portfolio for
21 the CEIP. We think, you know, just on its face, that it
22 would be a very help explanation.

23 The Plexus model that PacifiCorp uses is
24 quite complex. It consists of three separate different
25 models that have to be interpreted all together, and so

1 it's difficult for stakeholders to engage in that level
2 of complexity. So we think that the thorough
3 explanation would be useful.

4 Another aspect of the settlement is that
5 PacifiCorp will also provide an explanation for how they
6 initially submitted their preferred portfolio, which is
7 the P02-MM-CETA portfolio. Through discovery and an
8 extensive settlement discussion, we had extensive
9 discussions with PacifiCorp about how that portfolio
10 considered the social cost of greenhouse gas, even
11 though it was not a direct input into that portfolio.
12 It is very useful, we think, for the public and the
13 Commission to understand what PacifiCorp's initial
14 approach was.

15 As was mentioned, the settlement agreement
16 does not state that -- how -- that the P02-SCGHG
17 portfolio is how the social cost of carbon should be
18 used every time moving forward. And so we think it's
19 useful to have in the record information about what was
20 the initial attempted compliance from PacifiCorp as well
21 as what the settlement agreement requires, that more
22 directly and more clearly incorporated the social cost
23 of greenhouse gas into what would be the preferred
24 portfolio.

25 And so based on all of that and having that

1 information in the record, we think that that makes the
2 settlement agreement in the public interest.

3 JUDGE O'CONNELL: Thank you. Appreciate
4 that. I have no follow-up questions. Thank you. You
5 can go ahead and turn of your camera.

6 And I'd like to invite Staff's counsel to
7 turn your camera back on.

8 So, Mr. Callaghan, I want to get at what is
9 the primary motivation for the motion. Please tell me
10 what is the primary motivation and is it to get the CEIP
11 proceeding Docket UE-210829 moving? Because this
12 proceeding is preventing that one from moving forward.

13 MR. CALLAGHAN: In short, yes, Your Honor.
14 So I want to be clear that Staff -- and I don't want to
15 speak for the other settling parties -- but Staff was
16 not willing to resolve this matter at any cost, of
17 course. We wanted to make sure that what was included
18 in a refiling was, we believe, consistent with statute
19 and Commission rule and order.

20 However, given that we were able to reach
21 that resolution, Staff was weighing the value of
22 further -- of, you know, potentially, you know, we might
23 get penalties if this were fully litigated versus the
24 further delay that that would cause in this CEIP itself.

25 I think there wouldn't be anyone who would

1 disagree with the statement that as long as this
2 complaint is ongoing, it's extremely difficult, if not
3 impossible, to reach a resolution of the CEIP docket.

4 So Staff was weighing the value of, you
5 know, potentially getting a more beneficial outcome by
6 fully litigating versus, you know, being able to
7 continue and make progress in this CEIP, and that's the
8 basis for our motion to dismiss. And we believe it's in
9 the public interest.

10 JUDGE O'CONNELL: Okay. So generally, what
11 happened? It's quite significant that a complaint was
12 issued but now Staff is asking to withdraw. So I see in
13 this case a complaint with allegations, testimony from
14 Staff, and now Staff is asking the Commission for
15 permission to withdraw. What changed? Is Staff now
16 thinking that the complaint should not have been issued
17 in the first place?

18 MR. CALLAGHAN: No, Your Honor. So the --
19 the complaint and Staff's testimony asked for two
20 things. Mr. Rector's testimony is recommending that the
21 Commission order a refiling with the P02-SCGHG as the
22 basis for the preferred portfolio. That is part of this
23 agreement.

24 The second is that Staff was recommending
25 penalties in the amount that the Commission deems is

1 fair under the circumstances. That is not included, but
2 that is part of settlement and compromise and
3 negotiation.

4 So I -- I do -- I don't think that it was a
5 mistake to bring the complaint, but I think that this is
6 a fair and good resolution given the circumstances and
7 that it's in the public interest.

8 Again, this is a complicated issue. But I
9 think that this resolution, given everything that's
10 going on with the Commission, given that the PAC CEIP is
11 a year old at this point and it's still -- you know,
12 there are things that we are working with in the CEIP,
13 but to be honest, it can't be resolved until this
14 complaint is resolved, and this was the best way in
15 Staff's mind to resolve it.

16 JUDGE O'CONNELL: Okay. Thank you.

17 So I want to give you -- to follow up on
18 some things you said, and I -- I want to give you
19 another chance to elaborate more on what convinces Staff
20 that withdrawing the complaint is the right thing to do,
21 that it is in the public interest.

22 MR. CALLAGHAN: So the conditions -- the
23 agreement includes refileing the -- the CEIP with the
24 preferred portfolio that Staff recommended in the
25 testimony. So that is, in our minds, in Staff's

1 opinion, that brings the CEIP into compliance.

2 It's Commission policy that the goal of
3 enforcement is to assure compliance, and that is
4 achieved here.

5 So in terms of this being in the public
6 interest and, you know, this is, we think, a fair
7 resolution of the case. Is there anything more specific
8 you'd like me to address?

9 JUDGE O'CONNELL: No, not in that regard.

10 MR. CALLAGHAN: Okay.

11 JUDGE O'CONNELL: So I want to ask,
12 Mr. Rogala, if you could please turn on your video for
13 PacifiCorp.

14 For both Staff and PacifiCorp, I want to --
15 I want to talk about administrative penalties and how
16 they are addressed in the agreement, paragraphs 9 and
17 10. I want to know how these paragraphs operate in
18 regard to the allegations in the complaint. If you
19 would, please, explain the agreement's terms for
20 administrative penalties.

21 And I'd like to ask Staff first if you would
22 please explain the agreement's terms.

23 MR. CALLAGHAN: So, Your Honor, this is --
24 the settlement agreement includes that -- it doesn't
25 resolve any contested issue of fact or law presented by

1 the complaint. And it doesn't -- as I was referring to
2 in my opening statement, it's not a determination on the
3 merits.

4 And so paragraph 9 is just saying that it
5 doesn't resolve any of the issues presented in the
6 complaint and that this matter is simply -- the motion
7 and the agreement are simply supporting why the motion
8 to dismiss is in the public interest.

9 JUDGE O'CONNELL: Okay. Thank you.

10 Mr. Rogala?

11 MR. ROGALA: Yeah. Thank you, Your Honor.

12 I think it might be helpful to think about this
13 proceeding differently than from how Public Counsel has
14 phrased it. I think this difference helps illustrate
15 why the no-fault and no-penalty settlement term makes
16 sense.

17 So as I understand it, under the Washington
18 APA, when the Commission issues an initial or a final
19 order in an adjudicative decision, that decision
20 determines the rights and responsibilities to the
21 parties in that proceeding.

22 The Commission's settlement agreement
23 regulation is framed in being presented in that
24 adjudicatory forum. So you would require supporting
25 evidence and documentation to support a settlement

1 agreement because the Commission will be issuing a final
2 order that is going to actually impact the rights and
3 responsibilities of parties. And in order for an order
4 to be upheld on judicial review, you need findings of
5 fact that are based on substantial evidence. You need
6 evidence to support the record.

7 I think that's different from the posture of
8 this proceeding. Here, Staff has moved to withdraw its
9 own complaint under Commission regulations. And by
10 withdrawing the complaint, it necessarily would close
11 the adjudicatory proceeding. It would prevent
12 jurisdiction over the parties to issue a final order
13 that impacts the rights and responsibilities of the
14 parties.

15 So that places the Commission's decision,
16 instead of being an adjudicatory decision, it turns it
17 into an other agency action decision. And the cite for
18 that under the APA would be RCW 34.05.570, sub (4).

19 Because what the Commission is doing here is
20 the Commission is granting its permission for Staff to
21 withdraw its own complaint. And under that procedural
22 mechanism, under the APA, the Commission has broad
23 discretion to make decisions that it feels are not
24 arbitrary or capricious, and as long as they are within
25 the agency's, you know, statutory authority, they're not

1 unconstitutional. The Commission can take broad actions
2 under this other agency action vehicle.

3 So when that distinction is made, I think it
4 kind of highlights why this settlement paragraph No. 9
5 makes sense. It's just restating -- sorry. I just had
6 a restart on my computer. Can you guys see me okay and
7 hear me?

8 JUDGE O'CONNELL: We can hear you. You are
9 rather blurry, but we can see your figure. You're a
10 hazy image.

11 MR. ROGALA: All right. Let's -- maybe it
12 will restart here. I apologize. All right. I will
13 keep going, and then I will fix it when I stop.

14 So that decision, you know, underlines why
15 there's no fault and no penalty. So this settlement
16 term is just trying to show that what the Commission is
17 doing here is not, you know, issuing an initial order or
18 a final order on the merits of anything. What it's
19 doing is reviewing the agreement attached to the motion
20 to withdraw that is required by the Commission's
21 regulations.

22 And in that determination, it doesn't reach
23 the merits of whether PacifiCorp is at fault or the
24 merits of whether the administrative penalties are
25 warranted after a finding of fact.

1 And so it's a -- it's a CYA protection that
2 we felt was important to kind of frame the procedural
3 posture here. And we included this argument in our
4 motion to withdraw as a footnote, where we noted we
5 didn't think that Commission approval of the settlement
6 agreement was required under the motion to withdraw
7 regulations. But we, nonetheless, included, obviously,
8 because that's what the motion to withdraw regulation
9 requires.

10 So happy to answer any other questions, sir.

11 JUDGE O'CONNELL: Okay. Thank you. I do
12 have, in a little bit, a question about the standard of
13 standard of review that I want to get to, and I'm going
14 the ask Public Counsel about that as well.

15 Before I get to that, Staff and PacifiCorp,
16 I want to know if I grant the motion, is the complaint
17 withdrawn with prejudice as it regards administrative
18 penalties? Would the Commission be prevented from
19 considering it as part of the CEIP docket, the UE-20829,
20 whether -- whether administrative penalties are
21 warranted for these allegations?

22 MR. ROGALA: Your Honor, I think I can go
23 first unless Nash would like to. I'll defer to your
24 judgment here.

25 MR. CALLAGHAN: So, Your Honor, Staff's

1 position would be no, that the -- the Commission hasn't
2 made a determination on the merits. That's part of our
3 event of why the motion to dismiss should be granted.

4 And with that being said, though, you know,
5 the -- the refiling itself, I don't anticipate that
6 Staff, you know, given the procedure that's in the
7 agreement to review the -- the -- a draft of the
8 refiling before it gets filed, to look at the P02-SCGHG
9 portfolio prior to its actually being refiled, as a
10 practical matter, I don't see Staff looking at that
11 prior to it being filed, agreeing to it, and then
12 raising an objection in the CEIP docket that what we
13 just agreed to doesn't comply with statute or Commission
14 rule.

15 With that being said, from a legal
16 perspective, our position is that it's not with
17 prejudice.

18 JUDGE O'CONNELL: Mr. Rogala, is there
19 anything else you'd like to add?

20 MR. ROGALA: Yes, Your Honor. Going back to
21 that distinction between, you know, whether a decision
22 from this motion results in an initial order or another
23 agency action, I think it's another agency action. My
24 advice from my client is that they could not raise issue
25 or claim preclusion in a future docket, either in CEIP

1 or -- sorry -- the CEIP docket or in future proceedings
2 because's there no final decision on the merits of the
3 issue. The issue hasn't been litigated. The claim
4 hasn't been litigated. So we wouldn't have that
5 available.

6 If we view this as an initial or a final
7 order in the adjudicatory proceeding, though, I'd have
8 to think about that. There could be some precedential
9 or with-prejudice issues that are presented. But I --
10 I'd have to defer to Public Counsel on their
11 interpretation there.

12 But if it's a other agency action, the
13 motion to withdraw would be without prejudice, and we
14 fully anticipate that the SCGHG issue will get plenty of
15 discussion in the CEIP docket.

16 Or, more importantly, Public Counsel, Staff,
17 Sierra Club, NWECC, they're all participants as well.

18 And so I don't think this is the end of the
19 SCGHG discussion. It's going to be a continual process.

20 And just one more point is that the penalty
21 exposure, while I think there's a colorable argument
22 that a refiled CEIP would -- could start -- restart the
23 clock for the Company's, you know, alleged violation of
24 Commission authorities, but because this is kind of
25 clawed back to the initial CEIP, we're doing something

1 to effectuate our obligations to file a CEIP in 2021. I
2 don't think the clock would get restarted as Public
3 Counsel was arguing in their brief.

4 So I don't think you're prevented from
5 addressing the merits of the issue in the future, nor do
6 I think the Commission's penalty discretion --
7 discretionary powers would be impacted as well. It
8 actually could, you know, prejudice the Company because
9 it extends the potential daily accrual.

10 So I'll stop there.

11 JUDGE O'CONNELL: Thank you. So my interest
12 does come from or stem from several other points that
13 Public Counsel makes in its response. And you're
14 bringing that up, which is where my concern is coming
15 from and why I'm asking, which is about, you know, if I
16 grant this motion, are these -- are the potential for
17 administrative penalties gone or can the Commission
18 consider that in the other CEIP docket when PacifiCorp,
19 according to the settlement agreement, is going to
20 explain how the social cost of carbon was accounted for
21 or taken into account or included in the original and is
22 going to do more in an updated filing? I'm wanting to
23 know can the Commission look back at -- at this -- these
24 allegations and whether the original complied.

25 MR. CALLAGHAN: So, Your Honor, my position

1 would be that once the CEIP is refiled, what the
2 Commission is looking at in this CEIP docket is whether
3 the refiled CEIP is compliant and meets the Commission's
4 standard and policies with respect to CEIP.

5 Now, your question about whether the
6 Commission could -- is your question whether the
7 Commission could make a determination and potentially
8 assess penalties in the CEIP docket against the Company
9 based on the initial CEIP filing? Is that what you're
10 asking?

11 JUDGE O'CONNELL: Yes, consistent with the
12 allegations that are in this complaint.

13 So if I grant the motion to withdraw, the
14 complaint is gone. The complaint would be withdrawn.

15 But what I'm curious about is what
16 Mr. Rogala's focusing on. Is this with prejudice as to
17 those allegations? Could the Commission say, hey, wait
18 a minute. You didn't do what we had asked and what we
19 ordered in Order No. 1. Could that be brought up in
20 that docket?

21 MR. CALLAGHAN: So, Your Honor, the reason
22 that Staff brought these allegations as a formal
23 complaint is, I think, it's procedurally the appropriate
24 way to deal with alleged violations of Commission rule
25 and statute and order because it puts the Company on

1 notice that we are alleging violations.

2 So my opinion would be that the -- that it's
3 not a dismissal with prejudice, but the appropriate way
4 to bring this back up is to bring another formal
5 complaint.

6 I don't think that the Company would
7 properly be put on notice if this were simply addressed
8 in the CEIP docket. I think it would have to be brought
9 through another formal complaint.

10 But, again, I'm -- I'm saying that because
11 that is the conclusion that Staff and I reached before
12 bringing this formal complaint.

13 JUDGE O'CONNELL: And to follow up with
14 that, Mr. Callaghan, Staff's a party to this settlement
15 agreement. If I grant the motion, is Staff prevented by
16 the settlement agreement from filing another complaint?

17 MR. CALLAGHAN: I don't believe that we
18 would be because it's -- it's not being dismissed with
19 prejudice.

20 But, again, the goal here is to bring the
21 Company's filing into compliance. We believe that the
22 motion to dismiss conditioned upon the agreement that
23 we've reached with the other parties does that. And,
24 again, I think as a practical matter, if what the
25 Company shows us in their draft, that the settling

1 parties are satisfied with that, as a practical matter,
2 I find it very unlikely that Staff would see value in
3 bringing another complaint, given that this formal
4 complaint is what's delaying the progress in the CEIP
5 docket as well.

6 So I think it -- it seems like it would be
7 extremely counterproductive and illogical for Staff to
8 bring a complaint, given our interest in resolving the
9 CEIP docket and the yearlong delay that we've already
10 had in that docket and the importance of resolving that
11 matter.

12 JUDGE O'CONNELL: Okay. I'm ready to move
13 on to another topic, but, Mr. Rogala, do you have
14 anything else to add?

15 MR. ROGALA: Your Honor, if this is a
16 decision of other agency action, claimed initial
17 preclusion claims cannot be raised by the Company later
18 on because there's not a decision on the issue or the
19 claim on the merits.

20 So for example, say Staff still believes
21 after we refile our CEIP that it violates Commission
22 Order 1, the Commission's rules and statutes, then Staff
23 would be free to bring forth another complaint on that
24 issue.

25 We don't think it's appropriate to raise the

1 penalty issue in this CEIP docket because that would be
2 an acknowledgment docket, not a penalty or complaint
3 proceeding. But Staff could -- would have the
4 discretion to bring another complaint.

5 JUDGE O'CONNELL: Okay. Thank you.

6 Ms. Paisner, I see your video is on. I am
7 going to allow you an opportunity to address these
8 points as well. So rest assured, but I do have a couple
9 more questions for Staff, one more for Staff and
10 PacifiCorp.

11 Mr. Rogala, if you could please turn back on
12 your video.

13 Staff's motion states, so paragraph 7, The
14 settling parties agree that the P02-SCGHG portfolio
15 complies with the minimum requirements in statute and
16 rule and the requirements of Order 01.

17 I see this wording in the motion. I do not
18 see this term or a term stating this in the settlement
19 agreement. If this is part of the settlement agreement,
20 can you please direct me to where it is included?

21 MR. CALLAGHAN: So, Your Honor, I'm not sure
22 that it is included because I don't believe that it is
23 necessary because this agreement is just related to the
24 motion to dismiss and refiling the CEIP.

25 I think it would be hard for any party that

1 is signing onto this settlement agreement to then argue
2 that -- that what they reviewed, prior to the Company
3 refiling with that portfolio, is -- isn't compliant.

4 So to explain, the settlement agreement has
5 a process in which the Company provides us a draft of
6 their updated preferred portfolio using the P02-SCGHG as
7 the basis. And the parties will review it, and if there
8 is a party that believes that it's not compliant, it's
9 not consistent with this agreement, we would attempt to
10 resolve the matter. And if it can't be resolved, we
11 would bring the issue back to the Commission.

12 Given that process, it seems unnecessary to
13 include a term explicitly that states that the settling
14 parties agree that it meets the minimum requirements.

15 I don't want to speak for the other settling
16 parties, but Staff already put in its testimony that
17 this was our recommendation, that the Company refile
18 using the P02-SCGHG as their preferred portfolio.

19 So I would have to go back and review the
20 entirety of the settlement to see if it's explicitly
21 included there, but even if it's not, I don't think it's
22 necessary.

23 JUDGE O'CONNELL: Mr. Rogala, are you aware
24 of a term in the settlement that mirrors or includes the
25 language that is in Staff's motion?

1 MR. ROGALA: I do not, Your Honor. And I
2 agree with everything Mr. Callaghan just noted.

3 Another thing I'd add is that given its very
4 complex issue of first impression, I think it makes
5 sense to keep those specific modeling requirements out
6 of the settlement agreement and instead use language
7 that the settlement agreement promotes meeting the
8 minimum requirements of the authorities. Because we're
9 talking about a zone of compliance here. We're not
10 talking about a specific methodology required across all
11 utilities. Because we want to provide flexibility for
12 each utility to determine how to implement SCGHG at or
13 given their respective system constraints.

14 So I think there's hesitancy there to
15 provide that much detail, and I'll leave it at that.

16 JUDGE O'CONNELL: Okay. Mr. Callaghan, you
17 brought something up that I want to ask some more
18 questions about.

19 I thought, perhaps, I would return to it
20 later to ask the -- ask counsel during my questioning of
21 the witnesses, but I think you brought it up. And this
22 is a good place to ask since I'm interested in hearing
23 from counsel from Staff and PacifiCorp. It's about the
24 preclearance requirement.

25 My question is -- I have a couple -- but

1 what will happen if the parties don't all agree that the
2 revised portfolio is consistent with the agreement?

3 MR. CALLAGHAN: Thank you, Your Honor. So
4 that is part of the reason why the agreement -- that in
5 the motion we are asking that this agreement be included
6 as a condition of the Commission granting the motion to
7 dismiss. So that if there is an agreement -- or if
8 there is -- sorry -- if there is a disagreement during
9 this preclearance phase, the parties have a mechanism to
10 come back to that conflict -- come back to the
11 Commission with that conflict.

12 In other words, if there's a disagreement,
13 the parties will try to work it out informally. But if
14 it can't be worked out, we want this agreement to be a
15 condition of the motion to dismiss so that the issue can
16 be brought back to the Commission.

17 Because if the agreement is a condition of
18 the motion to dismiss and the -- pieces of the agreement
19 aren't followed, that would be a violation of Commission
20 order.

21 So there's other reasons that we're asking
22 that this agreement is a condition of granting the
23 motion to dismiss. We wanted to make sure, given that
24 there are interested parties in the PAC CEIP docket that
25 are not parties in this docket, we wanted to make sure

1 it was clear that the Commission was giving the Company
2 permission to refile.

3 But, again, one of the primary reasons here
4 is we wanted to make sure that there was a mechanism to
5 bring a -- any controversy that might come up back to
6 the Commission.

7 JUDGE O'CONNELL: Would that happen in this
8 docket? Would -- and so if they don't agree, would that
9 issue be brought back to this docket? Would we be,
10 essentially, in the same place that we are now?

11 MR. CALLAGHAN: I -- unfortunately, yes. I
12 mean, I'm -- I'm hoping that it does not come to that,
13 but part of the reason we're asking that this agreement
14 is a condition of the motion to dismiss is for that
15 reason.

16 But, again, I'm hopeful that we can resolve
17 this and that it doesn't come to that. But, yes,
18 that's -- that's essentially -- unfortunately, that
19 would be the reality of the -- of the situation.

20 JUDGE O'CONNELL: Okay. In this
21 hypothetical that could come from the terms of this
22 agreement, in that case, would -- returning, then, to
23 this docket, would the element of the agreement
24 addressing administrative penalties, would that part of
25 the agreement still be effective? Because it doesn't

1 indicate that there's a violation of the agreement. The
2 agreement would still be in effect.

3 MR. CALLAGHAN: So the terms of the
4 agreement are that the Company will refile the portfolio
5 using the P02-SCGHG as its basis. We would be bringing
6 this issue back to the Commission as a violation of the
7 Commission order and seeking to enforce the terms of the
8 agreement that the Commission included in their order.

9 So what we would be asking -- coming back to
10 the Commission and asking for is a determination on
11 whether the -- the draft that the Company provided us
12 with really is consistent with the terms of the
13 agreement that the Commission incorporated into its
14 order.

15 So what we would be asking for is a
16 determination on whether or not that draft portfolio
17 meets the terms outlined in the agreement, not a
18 determination on the merits.

19 JUDGE O'CONNELL: Okay. Mr. Rogala, there
20 are several questions there. Let me ask which one you
21 would like to address and allow you the floor.

22 MR. ROGALA: Let's just start about the
23 preclusive -- or what docket -- what happens.

24 I have a slightly different take than
25 Mr. Callaghan on this one. So I think if you look

1 narrowly at the settlement agreement, you could look at
2 this preclearance requirement and say this is clearly
3 what happens if PacifiCorp, you know, just sits on their
4 hands and turns in a revised CEIP that's the exact same
5 thing it did before or is different from the settlement
6 agreement.

7 Is it the case that this complaint
8 proceeding has been closed by an order on Staff's motion
9 to dismiss, and now we're in kind of regulatory no man's
10 land? I think if you look at the settlement agreement
11 narrowly, you could come to that conclusion.

12 But I don't think that's correct. I think
13 the right way to look at this term is that it's a burden
14 for PacifiCorp, and it's a benefit to parties.

15 The burden here is, you know, we're trying
16 to have a good faith settlement term here that when we
17 do something, when we revise the CEIP, parties get to
18 look at it, and they get to give some sort of input and
19 preclearance review before we'd actually start moving
20 forward in the CEIP. That's supposed to be, you know,
21 another checks and balances on us. And that's a good
22 faith effort on us to try to keep this regulatory
23 compact moving forward because we don't want
24 disagreements on this issue going down the road. Of
25 course, we can have ample discussions about what's the

1 correct methodology, but we want to make sure that what
2 we file aligns with the settlement agreement.

3 And here's the point. If we don't, we
4 violated the settlement agreement. And if we do that,
5 Staff or Public Counsel can file a complaint on this
6 issue.

7 And because of that, you know, the penalties
8 would still be live and, like we discussed earlier,
9 while I think there's colorable claim about the clock
10 could get restarted from when a refiled CEIP was filed,
11 I think the more plausible argument is that the refiled
12 CEIP would claw back to the initial statutory
13 requirements of when we're supposed to file a CEIP,
14 which is in 2021.

15 So it harms us to break this provision
16 because we have daily occurring penalty exposure if
17 Staff or Public Counsel wants to file a new complaint.

18 So if -- if you approve this motion to
19 dismiss, this proceeding closes. This paragraph 8
20 preclearance requirement is a tail requirement that
21 happens after this proceeding is closed. But if we
22 break that provision, then that's on us, and we get --
23 start a new complaint and be exposed to larger
24 penalties.

25 JUDGE O'CONNELL: Thank you both. I

1 appreciate that.

2 One last question and it's about the
3 standard of review. I've heard about it already from
4 the both of you and from Ms. Paisner in assessing
5 Staff's motion.

6 Do -- do I have to stop at the evaluation
7 standard on the motion and only consider whether the
8 motion is in the public interest? Essentially, not
9 going beyond the motion to also evaluate the settlement
10 using the Commission's standards?

11 MR. CALLAGHAN: Thank you, Your Honor. So
12 motions to dismiss do not have to have a settlement
13 agreement associated with it. Again, because they're
14 not decisions on the merits.

15 480-07-380, sub (3), the exact language is
16 that the motion must include any settlement or other
17 agreement to -- pursuant to which the party is seeking
18 withdrawal.

19 So my argument would be, first, that under
20 either standard, I think our motion and agreement meets
21 either standard.

22 But second, I think that the motion to
23 dismiss should be based on the public interest standard.

24 Now, of course, for a motion to dismiss a
25 formal complaint, whether the motion to dismiss is

1 consistent with the public interest, is going to be
2 decided in part based on some determination in some
3 sense of whether the agreement is -- the merits of the
4 complaint only in the sense of, you know, whether the
5 resolution of the issue is so out of bounds with the
6 Commission's assessment of how the matter should be
7 resolved that the proceeding actually needs to continue.

8 But, again, given the Commission's policy
9 favoring settlements, given the record that is in this
10 case related to what Staff was asking for in the
11 complaint and what this resolution of the issue
12 includes, again, I think under either standard, the
13 motion and the related agreement meets that standard.

14 JUDGE O'CONNELL: Okay. Thank you.

15 Mr. Rogala?

16 MR. ROGALA: Thank you, Your Honor. Just a
17 quick statement of the law and then two hypotheticals
18 that I think might be helpful.

19 The statement of law is we're here today for
20 the Commission to give permission for Staff to withdraw
21 its complaint. Review this as an other agency action
22 under the APA. That decision is reviewed for either an
23 arbitrary or capricious abuse of discretion in granting
24 permission or to determine whether it was constitutional
25 or exceeded the bounds of your statutory powers.

1 So I think that's kind of the bread and
2 butter standard of review process, and, you know, that
3 decision to permit approval of this motion is based on
4 public interest.

5 But that's, I don't think, is too helpful.
6 I think what's more helpful is to give some examples
7 about how that discretion should be used.

8 So on one side is where we are now, and
9 that's where a party has agreed with several other
10 parties in the docket to withdraw its own proceeding.
11 And by doing so, it could allow for more open
12 discussions on a complex issue.

13 If the Commission were to deny this motion,
14 it puts us in a weird position where the party who
15 initiated the complaint doesn't want to move forward
16 with the complaint, given the settlement agreement, but
17 then it is, nonetheless, forced to prosecute the
18 complaint after this motion to deny.

19 Of course, the Commission can order Staff to
20 do anything, but it's kind of a weird precedent for it,
21 and I think that -- I don't think that is, per se,
22 reversible. I just think it creates an interesting
23 dynamic and an interesting precedent for future cases.

24 On the other side is another example, where,
25 I think, the Commission should use or could use its

1 powers to dismiss -- sorry -- to deny a motion to
2 withdraw brought by a party. Say, for example,
3 PacifiCorp files a rate case, and there's a real bad
4 fact, a real bad issue in there, that parties have
5 discovered. And instead of the Company litigating that
6 decision to a final decision on the merits in the rate
7 case, we just move to withdraw our application. Say,
8 sorry, you know, not going to touch this issue, right?

9 In that circumstance, the public interest
10 would seem to be served by denying the Company's motion
11 to withdraw because public interest wants to have a
12 resolution of that disputed fact, right?

13 But it gives kind of a question of, you
14 know, like, culpability or mens rea here. Here, we're
15 not in a position where the Company is trying to
16 withdraw its own rate case. We're in a position where
17 Staff has, you know, diligently worked to resolve this
18 complaint and wants to withdraw its own complaint.

19 I think that kind of brackets, you know,
20 what the public interest discretion is here. And I'll
21 stop talking.

22 JUDGE O'CONNELL: Okay. Thank you both. I
23 appreciate your thoughtful responses.

24 Those are all the questions I have for
25 counsel from Staff and PacifiCorp at this point. Thank

1 you both, but please stay here, not with your video on.
2 You can go ahead and turn it off. But if you would,
3 please, be prepared to come back on if necessary.

4 Let me ask Public Counsel, Ms. Paisner, if
5 you could please turn on your camera. There's a lot
6 that came up in that discussion that I'm going to let
7 you address. I have a couple legal questions for you,
8 and I'll also let you follow up on some of the things
9 that were brought up by Staff and PacifiCorp.

10 I think if we could, we'll start kind of at
11 the end. And I want to ask you about the standard of
12 review, and my question for Public Counsel is, in
13 assessing Staff's motion, do I have to go beyond the
14 motion and also evaluate the settlement using the
15 Commission's standards for assessing a settlement
16 agreement?

17 MS. PAISNER: My answer to that question is
18 yes. And I believe we're talking about WAC 480-07-380,
19 and I have that in front of me.

20 The Commission will grant such a motion when
21 the request to withdraw is in the public interest. And
22 also, I think it's sub (3), sub (a), the motion must
23 include any settlement or other agreement pursuant to
24 which the party is seeking withdrawal.

25 If that settlement does not comply with the

1 Commission's rules for settlement, it would seem that
2 the basis underpinning the decision to approve a
3 withdrawal would -- would be fraud. And in that sense,
4 that goes back to your question about the judicial
5 review.

6 Under Chapter 34.05 RCW, Commission
7 decisions must be supported by an adequate record. And
8 in particular, I believe, as Mr. Rogala referenced, I
9 believe the standard is evidence that is substantial.
10 If evidence in the record does not support a settlement
11 agreement and it was filed as a settlement agreement, I
12 cannot understand what basis there would be to say the
13 Commission's own rules for settlement agreements would
14 not apply in that instance.

15 And so I -- I do not think -- I mean, first
16 of all, I don't think it's in the public interest at all
17 to grant this withdrawal. And I don't see how it would
18 be even -- even if you were to ignore the settlement
19 agreement requirements in WAC 480-74-740 and 750.

20 But I -- to answer your question in short,
21 yes, you must go beyond just the public interest and go
22 to those other WACs on settlement agreements if
23 it's supposed to support the motion to withdraw.

24 JUDGE O'CONNELL: So while you're -- Staff
25 is saying the motion and settlement, it meets both

1 standards. Doesn't matter which one you look at. And
2 you're saying it fails both standards no matter which
3 one you look at.

4 MS. PAISNER: Yes.

5 JUDGE O'CONNELL: Let me -- let me offer you
6 the floor to explain why, at bare minimum, this is not
7 in the public interest from Public Counsel's
8 perspective.

9 MS. PAISNER: Thank you, Judge O'Connell. I
10 first would like to dial it back to comments provided by
11 the Sierra Club referencing settlement discussions.
12 These discussions are not in the record.

13 What the record shows is PacifiCorp filed
14 its final CEIP on December 30, 2021, and it is now the
15 end of January 2023. There was discussion earlier about
16 the P02-SCGHG portfolio. That portfolio has existed
17 since before the final CEIP was filed in
18 December 30, 2021.

19 I just want to emphasize here, you know,
20 there's discussion about delay. And the delay here is
21 PacifiCorp's own delay. It's not the Staff's delay.
22 It's not any other party. CETA is the law, and the
23 Commission's rules implementing CETA, these are legal
24 requirements that is on PacifiCorp to comply with these
25 requirements. There should not need to be a settlement

1 agreement in which PacifiCorp complies only after the
2 Commission throws out this complaint alleging violations
3 of what it was supposed to do, that it was supposed to
4 meet these legal requirements in CETA, the Commission
5 rules and then also in the Commission order and this
6 other CEIP docket.

7 PacifiCorp also has indicated that they --
8 they know how to make this filing. They don't need the
9 Commission to withdraw the complaint. They can file it.
10 They filed an errata on April 27, 2022. They know full
11 well how to make this revision. They have made it seem
12 as though it's not something they're waiting to do,
13 other than just the Commission to not assess penalties
14 anymore.

15 And I think that the public interest is for
16 utilities to comply with CETA, to comply with the law
17 and the social cost of greenhouse gas in their CEIP
18 planning process. I think that PacifiCorp here is
19 attempting to be above that law. They're attempting to
20 go above not having to comply with CETA. And I think
21 they should have to do that. I think that if this
22 complaint were to be withdrawn, the public interest
23 would be harmed. I think it would send a clear message
24 to utilities that their compliance with the CETA
25 requirements does not have to be clear, that proceedings

1 can -- complaint proceedings like this one could go on
2 for over a year before utilities have to comply with the
3 CETA requirements and with the Commission's regulations
4 implementing it.

5 So I think that just ignoring, for the sake
6 of argument, the settlement agreement requirements in
7 WAC 480-07-740 and 750, I think the public interest is
8 harmed greatly by withdrawing this complaint.

9 But I think those requirements on settlement
10 agreements apply. I think the record, as indicated by
11 Staff's witness Rector's testimony and the 20 exhibits
12 referenced in that testimony, establishes that there
13 were violations here. There were violations of CETA,
14 the Commission's regulations, the Commission order in
15 the CEIP docket. I think there's an evidentiary basis
16 here that I think the Commission should pay close
17 attention to and be very concerned with the lack of
18 action by this utility. Thank you.

19 JUDGE O'CONNELL: Okay. Thank you. I have
20 a couple follow-up questions.

21 First, for clarity, in response to Staff's
22 motion, you're not asking that I assess penalties
23 against PacifiCorp at this point, correct? You're only
24 arguing that I should deny the motion to withdraw; is
25 that right?

1 MS. PAISNER: That's correct. Yes.

2 JUDGE O'CONNELL: Okay. Let me -- let me
3 return to a point that came up in my discussion with
4 Staff and PacifiCorp about the administrative penalties.
5 What are your thoughts about there being no preclusion
6 about the Commission being able to pursue the
7 administrative penalties regardless of whether I grant
8 the motion or not?

9 So in the event I do grant the motion, Staff
10 and public -- and Staff and PacifiCorp have said that
11 there would be no preclusion. What are your thoughts?

12 MS. PAISNER: Well, in the -- in the other
13 docket, it's not -- there's no litigation schedule. At
14 the moment, it's -- the parties have engaged in
15 discussions, but there's been no request for
16 adjudication.

17 Therefore, while it's possible that these
18 issues would not be precluded, it's unclear that they
19 would be pursued.

20 And furthermore, since there is no basis
21 to -- there's not a sufficient basis to withdraw it
22 here, and there's nothing holding PacifiCorp back from
23 complying with the law, I believe that this complaint
24 should not be withdrawn. The settlement agreement
25 should not be approved.

1 I think that it's unclear that these
2 penalties would be pursued in the other docket, and that
3 is concerning for the public interest.

4 JUDGE O'CONNELL: I want to ask you about
5 something that Mr. Rogala brought up, the perspective
6 that this could be viewed -- that granting the motion to
7 withdraw could be viewed as an other agency action
8 instead of an order resolving the adjudication.

9 Have you considered that and what are your
10 thoughts?

11 MS. PAISNER: I am unfamiliar with how this
12 would be considered an other agency action if -- if this
13 were to be pursued. I think that the Staff stated very
14 clearly in the complaint its authority to issue -- to
15 issue the complaint against PacifiCorp, and I think it's
16 perfectly justified for them to pursue it.

17 JUDGE O'CONNELL: Okay. Okay. Thank you.
18 Those were the questions I had for counsel.

19 I want to move on to witnesses, but I see
20 the time, that it's 10:55 a.m. We've been here for
21 nearly an hour and a half. I am slightly surprised at
22 how long the hearing has been thus far. I do not expect
23 it to last much longer as I only have a few questions
24 for witnesses.

25 But before we hear from witnesses, I would

1 like to take a short mid-morning break. So let's take a
2 ten-minute break. We'll come back at 11:05 a.m., and we
3 will begin with witnesses from the settling parties, in
4 particular, Staff witness Rector and PacifiCorp's
5 witness, I believe, it's Ghosh.

6 So does anyone else -- would anyone else
7 like to be heard before we take a break?

8 Okay. I'm hearing nothing. We will be off
9 the record until 11:05. Thank you.

10 (A break was taken from
11 10:56 a.m. to 11:06 a.m.)

12 JUDGE O'CONNELL: Okay. Thank you. Let's
13 be back on the record.

14 Thank you. We're back after a short break.
15 The time is now shortly after 11:05 a.m., and I have,
16 appearing on video, witnesses from Staff and PacifiCorp
17 as well as counsel. I'm going to ask that the witnesses
18 stay on video and testify as a group.

19 First -- first ask the witnesses, how would
20 you like me to address you during this hearing?

21 MR. RECTOR: Thank you, Your Honor. My
22 pronouns are he/him. You can address me as Mr. Rector.

23 JUDGE O'CONNELL: Okay. Thank you.

24 And for PacifiCorp, how would you like me to
25 address you in this hearing?

1 MS. GHOSH: Your Honor, my pronouns are
2 she/her, and you can address me as Ms. Ghosh.

3 JUDGE O'CONNELL: Okay. Thank you,
4 Ms. Ghosh.

5 Okay. I will swear you in as a group and
6 then we will move forward.

7 (Andrew Rector and Rohini Ghosh sworn.)

8 JUDGE O'CONNELL: Thank you. Let me turn to
9 counsel, Mr. Callaghan and Mr. Rogala, to introduce your
10 witnesses.

11 Mr. Callaghan, go first, please.

12 MR. CALLAGHAN: Thank you, Your Honor.
13 Commission Staff offers Andrew Rector for questioning.
14 Thank you.

15 JUDGE O'CONNELL: Okay. And, Mr. Rogala, go
16 ahead.

17 MR. ROGALA: Thank you, Your Honor.
18 PacifiCorp tenders Rohini Ghosh for any questions you
19 have.

20 JUDGE O'CONNELL: Thank you. For the
21 record, both witnesses, before we begin, starting with
22 Mr. Rector, will you please say and spell your name for
23 the record.

24 MR. RECTOR: Sure, my name is Andrew Rector,
25 first name A-n-d-r-e-w, last name R-e-c-t-o-r.

1 JUDGE O'CONNELL: Okay. Thank you. And,
2 Ms. Ghosh, would you please say and spell your name for
3 the record.

4 MS. GHOSH: Yes. My name is Rohini Ghosh,
5 first name Rohini, R-o-h-i-n-i, last name Ghosh,
6 G-h-o-s-h.

7 JUDGE O'CONNELL: Okay. Thank you both.
8 Now, Mr. Callaghan and Mr. Rogala, you can
9 turn off your video unless you need to be heard. Thank
10 you.

11 So, Mr. Rector, Ms. Ghosh, I want to ask a
12 little bit about the preclearance requirement in
13 paragraph 8 of the settlement agreement.

14 Please tell me about the preclearance
15 requirement process and how that is going to be in the
16 public interest.

17 And first, let's -- if I could hear from
18 Mr. Rector and then Ms. Ghosh.

19 MR. RECTOR: Sure. The preclearance
20 requirement requires the Company to file -- refile their
21 CEIP using the P02-SCGHG portfolio within seven business
22 days before the -- the end of the period as stated in
23 the order. And then Staff and all of the other parties
24 will have five business days to review that filing.

25 Yes. So that will sort of be the process of

1 the review, and Staff will certainly look through the
2 road map, the explanation, the work papers as well as
3 the refiled CEIP itself -- excuse me -- in that -- in
4 that time period to -- yeah.

5 JUDGE O'CONNELL: Okay. Thank you.

6 Let me turn to Ms. Ghosh.

7 MS. GHOSH: Thank you, Your Honor. I agree
8 with everything Mr. Rector just said. I think from our
9 side, the Company plans to prepare a revised CEIP in
10 line with all of the settlement agreements we've talked
11 about. So including the P02-SCGHG portfolio as well as
12 the additional detail and road maps. And all of that
13 material in its entirety would be supplied to Staff and
14 parties those seven business days before the official
15 filing period.

16 JUDGE O'CONNELL: Thank you. I do want to
17 ask about that time period.

18 The agreement says the parties will have
19 five business days to determine whether the draft
20 revised CEIP is consistent with this agreement, with the
21 settlement agreement.

22 Will you please identify for me the elements
23 of the settlement that the draft revised CEIP must
24 include in order to be consistent with the agreement?

25 MS. GHOSH: Sure. To my understanding, the

1 revised CEIP must include, first and foremost, the
2 P02-SCGHG portfolio as the basis for all analysis and
3 compliance assessment within the CEIP. So that means
4 that we will only present results from the P02-SCGHG
5 portfolio, and any additional resources that need to be
6 added to this portfolio for compliance against our 2030
7 or 2045 requirements to supply Washington retail sales
8 with a -- either carbon neutral or completely
9 nonemitting source of energy generation, any resources
10 that need to be added for that purpose would be added to
11 the P02-SCGHG Washington allocated portfolio.

12 And so that additional portfolio, which then
13 we might call P02-SCGHG CETA, would be still based on
14 P02-SCGHG, and so both portfolios would be filed, one as
15 the alternative, lowest reasonable cost portfolio, and
16 one as the CEIP preferred portfolio.

17 Additional to just the -- the revised
18 portfolio analysis based on those stated portfolios, we
19 would also include additional detail of just how the
20 P02-SCGHG portfolio was created. That includes more
21 detail around the Plexus modeling software, how the
22 social cost of greenhouse gas is added as a dispatch
23 cost adder to all emitting resources as also reflected
24 in market prices, and then also additional detail to
25 how -- once that optimal portfolio is formed, how we

1 then get a Washington allocated view and more discussion
2 around Washington allocated resources only, less so on
3 the system as a whole.

4 And additionally, similar detailed
5 explanation and road map to how we got to P02-MM-CETA,
6 which was the originally filed 21-IRP preferred
7 portfolio and CEIP portfolio.

8 I believe that that captures all of the main
9 ingredients that would be in the refile. Of course,
10 that also flows into a redone incremental cost section
11 based on those portfolios I mentioned. And Mr. Rector
12 can point out anything if I've missed something.

13 MR. RECTOR: No, I don't believe that I have
14 anything to add there.

15 JUDGE O'CONNELL: Okay. So thank you both.
16 And thank you, Ms. Ghosh.

17 So I'm looking at the -- the settlement
18 agreement. And what I believe I heard from you is that
19 the elements that have to be included, those are the
20 things that are spelled out in paragraph 5. It says
21 PacifiCorp will use the P02-SCGHG portfolio as the
22 basis.

23 It goes on to explain, then, that you
24 will -- the preferred portfolio, that will include all
25 Washington allocated resources.

1 So that paragraph, that's the one that
2 identifies the elements that will determine whether it's
3 consistent with the agreement; is that correct?

4 MS. GHOSH: Yes, Your Honor. That's
5 consistent with my understanding.

6 MR. RECTOR: Yeah.

7 JUDGE O'CONNELL: Mr. Rector, sorry?

8 MR. RECTOR: Yes, I agree.

9 JUDGE O'CONNELL: Okay. Thank you.

10 So my next question is to follow up.

11 Mr. Rector, could -- and also Ms. Ghosh,
12 could PacifiCorp submit the same CEIP and be consistent
13 with the agreement? Does something have to be
14 different?

15 MR. RECTOR: The portion that would have to
16 be different would be the filing using the P02-SCGHG
17 portfolio. That would -- that would be the significant
18 difference there.

19 MS. GHOSH: Yes, Your Honor. Exactly what
20 Mr. Rector just said. From our point of view, filing
21 with the P02-SCGHG portfolio as the base portfolio is
22 different than what we did in the original filing,
23 though the modeling outcomes for the Washington
24 allocated portfolio will look the same for the capacity
25 decisions.

1 However, because we will be running the
2 systems operation piece under the social cost of
3 greenhouse gases rather than expected price conditions,
4 this will result in different calculations of our
5 renewable and nonemitting energy targets.

6 And so all of these are elements in
7 Chapter 1 of the CEIP, which will be updated to reflect
8 the new portfolio for the basis of the CEIP as well as
9 the incremental cost section.

10 So in short, yes, we will file something
11 different. We would not be able to file the exact same
12 CEIP in -- pursuant to the settlement agreement.

13 JUDGE O'CONNELL: Okay. Thank you.

14 So Mr. Rogala accurately stated that these
15 issues are quite complex. And I want to make sure I
16 understand a little bit more about what model is already
17 included, just so I understand the mechanics. I want to
18 ask about the model used versus what will be refiled as
19 the draft revised CEIP.

20 Is the current version of the P02-SCGHG
21 portfolio already included in the P02-MM-CETA portfolio
22 or is that something new that has to be created?

23 MS. GHOSH: Thank you for that question,
24 Your Honor. I will preempt this with it's -- I will try
25 to answer this fully and succinctly so that it's not

1 confusing because this is a lot of material.

2 So the short answer is the P02-SCGHG
3 portfolio is already created. It was run as a set of --
4 within the set of portfolios we developed during the
5 process of the 2021 integrated resource plan at
6 PacifiCorp. The social cost of greenhouse gas dispatch
7 cost adder was added in several different portfolios in
8 different ways, but I will just focus on P02-SCGHG as
9 the topic.

10 And so that portfolio was run and it exists
11 and so that is not new. Those work papers were also
12 filed as part of the CEIP filing.

13 The way in which it informs P02-MM-CETA is
14 that there were essentially two portfolios that were
15 feeding into the final resource selection for
16 P02-MM-CETA.

17 So P02-MM was identified as a top performing
18 portfolio amongst the range of portfolios we ran for
19 system performance. But P02-SCGHG was specifically
20 analyzed for Washington allocated resources.

21 And so both portfolios were actually
22 assessed against CETA clean energy targets, specifically
23 the 2026 requirement that coal fuelled resources are out
24 of Washington customer rates, the '23 requirement that
25 Washington retail sales are supplied by carbon neutral

1 generation, and the 2045 target that Washington retail
2 sales are 100 percent supplied by nonemitting
3 generation.

4 And it was found that neither portfolio was
5 actually fully compliant in 2030. There was a bit of a
6 shortfall where we were not meeting 80 to 100 percent of
7 Washington retail sales with nonemitting resources.

8 But what we did was we looked at those
9 outcomes that were optimally generated under the social
10 cost of greenhouse gases and immediately found that in
11 the action plan window and in the first ten years that
12 higher energy efficiency selections were a result
13 because those energy efficiency bundles were relatively
14 cost effective and offset highly impactful emitting
15 generation. And so that was brought into the final
16 portfolio.

17 There were no other resources over the
18 20-year horizon of that social cost of greenhouse gas
19 portfolio allocated to Washington that we had that had a
20 meaningful impact in terms of allocating more renewable
21 or nonemitting generation to Washington. So whatever we
22 found that was optimal was brought into the final
23 portfolio.

24 And it was called P02-MM-CETA for that
25 reason because it was assessed to be compliant against

1 targets, and the Washington allocated resources were
2 optimized under social cost of greenhouse gases.

3 And so that final resulting portfolio was
4 the result of analysis in both prior price policies.
5 And the final portfolio was run under expected price
6 conditions, which is MM, which is medium -- gas medium
7 carbon price.

8 JUDGE O'CONNELL: Okay. Thank you.

9 So I have a few final questions just for
10 Staff. So, Mr. Rector, the settling parties agree that
11 the P02-SCGHG portfolio complies with the minimum
12 requirements and statute and rule. This is the part
13 that's in Staff's motion and the requirements of
14 Order 01.

15 What is -- what is Staff getting out of this
16 settlement agreement? Is it only the explanation of how
17 the P02-SCGHG portfolio is included in the P02-MM-CETA
18 portfolio?

19 MR. RECTOR: Excuse me. That is a big part
20 of what Staff is getting, but also, the use of the -- of
21 the -- excuse me -- P02-SCGHG, as Ms. Ghosh, I think,
22 just sort of mentioned as being the -- the portfolio
23 upon which the CEIP is based.

24 JUDGE O'CONNELL: Okay. I see
25 Mr. Callaghan's video is on.

1 Mr. Callaghan, do you need to be recognized?

2 MR. CALLAGHAN: No, Your Honor. Sorry. I
3 was just turning on my video in case things steered in a
4 more legal direction. But I -- Mr. Rector answered the
5 question. So I'm fine.

6 JUDGE O'CONNELL: Okay. Mr. Rector, I do
7 have another question for you that is very similar to
8 what I asked of Mr. Callaghan, and it's about Staff's
9 primary motivation.

10 Is Staff's primary motivation to get the
11 CEIP docket moving forward?

12 MR. RECTOR: Yes. As I believe
13 Mr. Callaghan and also Mr. Rogala have noted, it has
14 been a little over a year now since the CEIP has or was
15 filed with the Commission. So we look -- we would like
16 to move on to that docket. It's -- yes. That's -- that
17 is something that's important to the -- to Staff. So...

18 JUDGE O'CONNELL: Okay. In your testimony,
19 Mr. Rector, you doubted whether the social cost of
20 greenhouse gases was included in PacifiCorp's CEIP. I'm
21 curious if you are now -- are you now convinced that it
22 is included?

23 MR. CALLAGHAN: So, Your Honor, could I jump
24 in for a second?

25 JUDGE O'CONNELL: Go ahead, Mr. Callaghan.

1 MR. CALLAGHAN: Thank you, Your Honor. So
2 my concern here is that what's being presented in front
3 of the Commission today is, in part, an agreement. And
4 there are -- during settlement negotiations, there are
5 things that are discussed and are brought up that are
6 confidential. And Staff's motivation for reaching this
7 compromised position has to do with things ranging from
8 the content of the agreement to an assessment of
9 litigation risk and all kinds of considerations related
10 to the evidence that might have been presented at an
11 evidentiary hearing.

12 And so I'm just concerned that this is
13 straying into an area that might inadvertently lead to
14 confidential information being discussed.

15 JUDGE O'CONNELL: Thank you. I understand.

16 Let me -- let me ask you, Mr. Rector, in a
17 little bit different way.

18 Please explain from your perspective and
19 not -- be aware. I have read the testimony that's been
20 filed in this docket -- why you think that the granting
21 the motion to withdraw, accepting the settlement
22 agreement is in the public interest, why that's the
23 right thing to be doing at this point.

24 MR. RECTOR: It is in the public interest
25 for a few reasons.

1 For one, it -- it does get us to a place of
2 compliance with the rule and law and order. And it does
3 so in a way that is voluntary and, again, doesn't
4 require penalties or anything.

5 And, again, also, it does help mitigate the
6 risk of litigation and continuing into, you know,
7 continuing to litigate in this particular docket.

8 But, again, it also -- it also is in the
9 public interest because, as mentioned, the CEIP docket
10 is a year old now, and the Staff is -- is definitely
11 interested in moving on to that docket and the
12 discussions involved in it as well.

13 JUDGE O'CONNELL: Okay. Thank you. Let
14 me -- let me ask counsel.

15 Mr. Callaghan, Mr. Rogala, and other
16 counsel, let me turn to you. Is there -- let me offer
17 an opportunity for you to ask questions of the
18 witnesses, if you have any.

19 MR. CALLAGHAN: Thank you, Your Honor. I
20 have no further questions for the witnesses.

21 JUDGE O'CONNELL: And, Mr. Rogala?

22 MR. ROGALA: No further questions, Your
23 Honor.

24 JUDGE O'CONNELL: Okay. I do not have any
25 more questions. So, Mr. Rector and Ms. Ghosh, thank you

1 very much for your testimony. You are ex -- excuse me.

2 You are excused. Appreciate your testimony.

3 Let me now ask for Public Counsel witness
4 Chase to please appear on video to testify.

5 And, Ms. Paisner, if you could also please
6 turn on your video.

7 So first, for Public Counsel's witness, how
8 would you like me to address you during this hearing?

9 MS. CHASE: Good morning. Thank you, Judge
10 O'Connell. My name is Stephanie Chase. I use she/her
11 pronouns, and you may address me as Ms. Chase.

12 JUDGE O'CONNELL: Thank you. Okay. I will
13 swear you in and then we will move forward.

14 (Stephanie Chase sworn.)

15 JUDGE O'CONNELL: Thank you.

16 Ms. Paisner, want to recognize you to please
17 introduce your witness.

18 MS. PAISNER: Thank you.

19

20 E X A M I N A T I O N

21 BY MS. PAISNER:

22 Q. Good morning, Ms. Chase.

23 A. Good morning.

24 Q. Please state and spell your name.

25 A. My name is Stephanie Chase. Stephanie is

1 spelled S-t-e-p-h-a-n-i-e. Chase is spelled C-h-a-s-e.

2 Q. What is your place of employment?

3 A. I'm a regulatory analyst for the Public Counsel
4 Unit of the Washington State Attorney General's Office.

5 Q. Did you file testimony and any exhibits in this
6 docket on behalf of Public Counsel?

7 A. Yes, I filed testimony in this docket.

8 Q. Was your testimony prepared by you or under your
9 instruction and supervision?

10 A. It was.

11 Q. Do you have any changes to your testimony?

12 A. I have one update to make. On page 14, we -- I
13 addressed the number of violations, and that was based
14 on a hearing date of January 19, which would result in
15 1,930 violations. I would update that today, as our
16 hearing is seven days later, to a total of 1,965
17 violations.

18 Q. Thank you.

19 MS. PAISNER: Your Honor, Ms. Chase is ready
20 for questioning.

21 JUDGE O'CONNELL: Thank you.

22 Well, I want to hear more from you about the
23 harm to this CEIP process if the Commission were to
24 grant Staff's motion to withdraw.

25 In your testimony, page 13, line 18 through

1 14, line 6, you describe how serious or harmful the
2 alleged allegation is to the public, and you speak to
3 the potential that an incorrect accounting of the social
4 cost of greenhouse gases could lead to selecting
5 different resources and an incorrect incremental cost
6 calculation.

7 Will you please elaborate?

8 MS. CHASE: Sure. The -- as -- as you heard
9 from the witnesses from PacifiCorp, the difference is
10 in -- the resource selections in this particular CEIP
11 were not great.

12 But our concern is for compliance going
13 forward. We would like all the utilities to follow the
14 rules as they are written and comply with the
15 requirements.

16 In other years, there may be larger
17 differences if they don't account for the social cost of
18 greenhouse gas in the way that they are supposed to or
19 sort of in the band of ways that they are supposed to
20 and clearly explain that.

21 Then -- then we believe that that can result
22 in different resource selections and impact Washington's
23 climate goals in a negative way.

24 JUDGE O'CONNELL: So is your point that this
25 would send a bad signal? If not be a bad precedent, but

1 a bad signal?

2 MS. CHASE: Yes. It would send a signal to
3 utilities that they don't have to be particularly
4 cleaner in writing their documents and providing their
5 explanations to Staff and other parties. And we would
6 like to see -- you know, see this succeed, and we
7 believe that it's important to enforce -- to require
8 compliance with the law.

9 JUDGE O'CONNELL: Okay. I'm being conscious
10 of the fact that I am not try -- I'm not asking for
11 confidential information or negotiation discussions to
12 be disclosed here.

13 But thinking about whether -- whether there
14 is an incorrect accounting of the social cost of
15 greenhouse gases, do you see an incorrect accounting
16 here?

17 MS. CHASE: What we have in the record is
18 unclear. And certainly, the explanation that was
19 provided by Ms. Ghosh a few minutes ago is helpful
20 information to have on the record.

21 But, again, Public Counsel's concern is that
22 we don't have a filing, either in this docket or in this
23 CEIP docket, that clearly explains how the Company
24 accounts for the social cost of greenhouse gas.
25 Although, they know how they have done it, it has not

1 been clearly explained on the record or in conjunction
2 with the filing of the settlement agreement and motion
3 to withdraw.

4 JUDGE O'CONNELL: I want to follow up on
5 that because I did hear Ms. Ghosh give quite a bit of
6 explanation. And you, having heard that testimony
7 today, do you have any more or new thoughts stemming
8 from what you've heard today?

9 MS. CHASE: I guess primarily a question as
10 to why that explanation has not been provided on the
11 record.

12 I do not, you know, doubt Ms. Ghosh's
13 capacity and -- and excellence at providing this
14 information. I am just curious as to why the Company
15 has not provided it on the record thus far.

16 JUDGE O'CONNELL: Well, I asked both Staff
17 witness and PacifiCorp's witness, and so I will ask you
18 and offer you that same opportunity to explain why you
19 think granting the motion is not the right thing to do,
20 not in the public interest.

21 MS. CHASE: In this case, we believe --
22 Public Counsel believes that the Company has not
23 demonstrated compliance with the requirements of CETA
24 and the Commission's prior order. We believe that it's
25 not in the public interest to allow the motion to

1 withdraw to go forward and the settlement agreement to
2 go into effect without evidence on the record in support
3 of what the Company is actually doing.

4 As we -- as I stated in my testimony, they
5 have in the settlement agreement a plan to comply, but
6 that's not actually compliance. Public Counsel believes
7 that it would be in the public interest to provide that
8 evidence, that demonstration of compliance, in order to
9 assure the public and stakeholders that the Company is
10 following the rules and -- and statutory requirements of
11 CETA.

12 JUDGE O'CONNELL: Okay. Thank you. Those
13 are all of my questions.

14 Turning now to counsel to offer an
15 opportunity to ask any questions.

16 MS. PAISNER: I have one question.

17 Ms. Chase, are you aware of any reason or
18 anything in the record that explains why PacifiCorp has
19 waited this long to revise its CEIP that it filed on
20 December 30, 2021?

21 MS. CHASE: I'm not aware of anything, any
22 explanation.

23 MS. PAISNER: Thank you.

24 JUDGE O'CONNELL: Okay. Thank you.

25 Ms. Chase, thank you for your testimony

1 today. I don't have any more questions. You are
2 excused.

3 MS. CHASE: Thank you.

4 JUDGE O'CONNELL: Thank you very much.

5 Okay. I want to take a breath and then hear
6 from counsel for the parties with any closing statements
7 or closing arguments that they want to present.

8 I'll turn to Public Counsel last.

9 First, let me recognize Staff and then
10 PacifiCorp and any other of the settling parties who
11 would like to be heard, and then we'll turn to Public
12 Counsel.

13 So first, let me recognize Staff.
14 Mr. Callaghan?

15 MR. CALLAGHAN: Thank you, Your Honor. I
16 don't have any additional comments or thoughts to
17 provide, other than what I've stated in my opening
18 statement.

19 We've had a robust discussion today. I
20 think we've covered all of the issues, and I urge the
21 Commission to approve the motion.

22 JUDGE O'CONNELL: Okay. We have heard a lot
23 from witnesses. So I -- that is why I am affording this
24 opportunity. So that if counsel has any additional
25 thoughts, that you could provide it. So thank you,

1 Mr. Callaghan.

2 Mr. Rogala, from PacifiCorp, any closing
3 thoughts?

4 MR. ROGALA: Yeah. Three quick points, Your
5 Honor.

6 First, it's a lot of legal argument here
7 today. I think the authorities were cited. So we can
8 use the hearing transcript to the extent there's
9 questions on, you know, clarifying positions here.

10 But, of course, if you want legal briefing
11 on any of these issues, we're happy to provide further
12 argument, if you'd like. We stand ready to provide
13 briefs if you order any.

14 Second, you know, just want to zoom out.
15 Why are we here today? You know, we're here today to
16 get the thumbs up or a thumbs down on whether the
17 Commission should permit Staff to withdraw its
18 complaint. And in that scope, I think, it's a simple
19 decision. Because when Staff has asked to withdraw its
20 complaint, withdraw its adjudicatory proceeding, then by
21 definition, you know, there can't be a decision on the
22 merits.

23 And if that's the scope, then, you know, in
24 broad discretion to decide whether to do that or not,
25 and given those range of examples that we talked about

1 earlier, we think the discretion falls on the side of
2 approving the Staff's motion because they're taking the
3 proceeding out and not allowing for a decision on the
4 merits.

5 But this isn't, you know, hiding the ball.
6 This goes to my third point. This allows us to do the
7 hard work, which is continue the CEIP docket with a
8 refile and revised CEIP, where we can, you know, keep
9 working through where I'm sure there'll be disputed
10 issues and get an acknowledged CEIP. So that can then
11 inform future RFPs for nonemitting and renewable
12 resources, which can then help further reduce our
13 emissions across our six-state service territory.

14 That's the important stuff. We don't want
15 to minimize at all that this is a complex and nuance
16 issue. But we think the appropriate place to resolve
17 that is in the CEIP docket and with continuing
18 discussions with Staff and the Commission.

19 So we just want to thank everyone.
20 Available for any questions or comments, and yeah.

21 JUDGE O'CONNELL: Okay. Thank you.

22 Let me turn to representatives from AWEC,
23 Sierra Club, NWEA. If there is anything that you would
24 like to add after hearing everything this morning, I
25 would invite you, optionally, to make any final

1 comments.

2 Okay. Hearing nothing, I am going to turn
3 now to Public Counsel.

4 Ms. Paisner, if there's anything else that
5 you would like to add, concluding thoughts, please, go
6 ahead.

7 MS. PAISNER: Thank you, Your Honor.
8 Earlier today PacifiCorp used the expression sitting on
9 their hands, and that is the reason we are here today.
10 We are here today because of PacifiCorp's delay and
11 PacifiCorp's failure to cooperate with UTC Staff and
12 comply with the law on SCGHG and PacifiCorp's failure to
13 file a timely revision to that CEIP.

14 The Commission's enforcement policy
15 considers whether the Company promptly corrects
16 violations and remedies impacts, and it has been over a
17 year during which PacifiCorp, to use its own words, has
18 sat on its hands and failed to correct and clarify the
19 record on inclusion of SCGHG and its CEIP.

20 PacifiCorp must provide a CEIP that complies
21 with CETA, the Commission's implementing regulations,
22 and the Commission's Order 01 in Docket UE-210829.

23 Without evidence in the record, provided
24 with the settlement agreement to withdraw the complaint,
25 and to the contrary, with ample evidence supporting

1 penalties for violations, the public interest requires
2 the Commission to reject the settlement and deny the
3 motion.

4 The Commission must hold PacifiCorp to the
5 law. Completing this adjudication could happen quickly,
6 and the Commission should require PacifiCorp to follow
7 through with this because this proceeding still exists
8 entirely due to PacifiCorp's own delay.

9 Public Counsel asks that the Commission
10 require PacifiCorp's compliance with the SCGHG
11 requirements on the record before allowing withdrawal of
12 the UTC Staff complaint. Thank you.

13 JUDGE O'CONNELL: Okay. Okay. Thank you
14 all for your efforts today, counsel and witnesses, and
15 in preparation of today. I want to address expectations
16 for when I will issue an order.

17 We typically receive our transcripts from
18 the hearing in about a week. I intend to issue an order
19 soon after receiving that transcript for reference
20 purposes.

21 Is there -- let me request that counsel turn
22 on their videos here at the end. I'd like to ask
23 counsel, is there anything else we should address before
24 we adjourn today?

25 MR. CALLAGHAN: I don't believe so, Your

1 Honor.

2 JUDGE O'CONNELL: Okay. Hearing nothing,
3 again, I want to thank you.

4 Oh, Mr. Rogala?

5 MR. ROGALA: Your Honor, it's just a small
6 thing. It struck me when I was listening to Public
7 Counsel.

8 In the hypothetical that Staff's motion is
9 denied, you know, it's our position that the proceeding
10 would continue along the normal contested case schedule.
11 We would have, you know, the rights for response
12 testimony to Staff's testimony. Interveners could file
13 response testimony, and then there would be the
14 potentially cross-intervener response testimony and
15 Staff reply testimony as well. And then an evidentiary
16 hearing after, you know, all that procedural schedule.

17 I think that's assumed and given, but I just
18 want to make sure that that's -- would be our
19 understanding of the case. But nothing beyond that.

20 JUDGE O'CONNELL: That is also my
21 understanding.

22 Is there -- I don't know if there could be a
23 different understanding, but if there is, I can assure
24 the parties that, in the event the motion is denied, we
25 will have to reestablish a new schedule. And at that

1 point, we will be discussing what that new schedule will
2 look like and what procedural needs there are.

3 So, Mr. Rogala, what I guess I'm trying to
4 say is that I don't think we need to discuss that in
5 detail now because in the event it is denied, then we
6 would have to set a new schedule. And we would address
7 those issues then. Okay.

8 MS. PAISNER: Your Honor, may I just -- I
9 apologize. May I just add one more thing?

10 PacifiCorp -- our understanding is that
11 PacifiCorp may file a revision to its CEIP at any time.

12 JUDGE O'CONNELL: Okay. Thank you. That
13 was my understanding from your presentation today. And
14 so yep, I got that.

15 Okay. Before we sign off, before we
16 adjourn, anything else we should address?

17 Okay. I'm hearing nothing, but it is a
18 video hearing, a virtual hearing. I just want to take a
19 breath to allow that opportunity to hit the unmute
20 button.

21 Okay. Hearing nothing, we are adjourned.
22 Thank you all. We are off the record.

23 (Adjourned at 11:47 a.m.)

24

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.



Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358

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