BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,<br><br>Complainant,<br><br>v.<br><br>PACIFICORP d/b/a/ PACIFIC POWER & LIGHT COMPANY,<br><br>Respondent. | DOCKET UE-220376 |

**STAFF'S SURRESPONSE TO PACIFICORP'S MOTIONS TO DISMISS AND STAY PENALTIES**

July 26, 2022

ROBERT W. FERGUSON
Attorney General

JEFF ROBERSON
Assistant Attorney General
Office of the Attorney General
Utilities & Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1188
jeff.roberson@utc.wa.gov

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## I. INTRODUCTION

*1* Since 2020, the Commission has twice provided PacifiCorp guidance on its obligations under Washington's Clean Energy Transformation Act.

*2* The first bit of guidance came in the order adopting rules governing clean energy implementation plans (CEIPs). In that order, the Commission interpreted RCW 19.280.030(3)(a) to require utilities to consider the social cost of greenhouse gas (SCGHG) emissions as a cost adder in "actual investment decisions."[1]

*3* The second bit of guidance came when PacifiCorp asked the Commission to waive the requirement that it incorporate the SCGHG adder into its alternative lowest cost and reasonably available portfolio (Alternative LRCP). The Commission denied that request by order (Order 01), and in doing so explicitly ordered PacifiCorp "to include in its final CEIP both an Alternative LCRP and a preferred portfolio that incorporates the SCGHG as required by WAC 480-100-605 and RCW 19.280.030(3)(a)."[2]

*4* PacifiCorp, despite this explicit guidance, filed a final CEIP that did not include the SCGHG as a cost adder in the preferred portfolio except in the context of its energy efficiency portfolio.[3] An administrative law judge determined that the Commission had probable cause to complain against the company for violations of RCW 19.280.030(3)(a), WAC 480-100-640(7) and -660(4), and Order 01 on that basis.[4]

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[1] *In re Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698, General Order R-601, 47 ¶ 131 (Dec. 28, 2020).
[2] *In re Petition of PacifiCorp*, Docket UE-210829, Order 01, 3 ¶ 10 (Dec. 13, 2021) (Order 01).
[3] *See generally in re CEIP of PacifiCorp*, Docket UE-210829, PacifiCorp Clean Energy Implementation Plan (Dec. 30, 2021).
[4] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-220376, Complaint & Notice of Prehearing Conference, 8 ¶ 28 (June 6, 2022) (Complaint).

*5* PacifiCorp moves to dismiss that complaint,[5] or, alternatively, to stay penalties.[6] Staff's response explains why a dismissal or a stay would be improper, and the arguments PacifiCorp makes in reply do nothing to those arguments. The Commission should deny both motions.

## II. ARGUMENT

*6* The Commission should deny PacifiCorp's motion to dismiss. The authority PacifiCorp cites in support of its challenge to the complaint for vagueness lends it no support, PacifiCorp does not contest that it lacks the standing to make the vagueness claim, and PacifiCorp fails to show something more than ambiguity in the complaint. PacifiCorp's argument as to a meaningful opportunity to be heard ignore both that it will receive just that in this docket and the Commission's ability to consolidate this proceeding with the CEIP proceeding. PacifiCorp's ripeness arguments fail given that, as Staff has already explained, the complaint alleges complete violations. And PacifiCorp's preemption claim falters on its admission that federal law does not preempt some forms of relief.

*7* The Commission should also deny PacifiCorp's motion to stay penalties. Again, PacifiCorp does not actually request a stay but rather an impermissible amendment of the complaint. And, regardless, the equities do not favor granting it the relief it seeks.

[5] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-220376, PacifiCorp Motion to Dismiss (June 27, 2022) (Motion to Dismiss).
[6] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-220376, PacifiCorp Motion to Stay Penalties (June 27, 2022) (Motion to Stay).

### A. The Commission Should Deny PacifiCorp's Request To Convert Its Motion Into One For Summary Determination Because PacifiCorp Argues That Material Issues Of Fact Exist And Because Conversion Would Prejudice Staff

*8* Before turning to the merits of PacifiCorp's arguments for dismissal, Staff must address PacifiCorp's request that the Commission convert its motion to dismiss into one for summary determination because doing so will cause no prejudice.[7] The Commission should deny that request because PacifiCorp fails to show the requisites for summary determination and because the conversion will prejudice Staff.

*9* To move for summary determination, PacifiCorp must first show the absence of a material issue of fact.[8] PacifiCorp not only fails to attempt to do so here, it explicitly assures the Commission that such material issues of fact exist.[9] Those assurances preclude summary determination.[10]

*10* Regardless, PacifiCorp's claim that converting its motion into summary determination will not cause any prejudice is incorrect.[11] To the extent that PacifiCorp wants the Commission to grant it summary determination on certain issues, Staff has answered PacifiCorp's claims in the context of a motion to dismiss and based on the standards applicable to such motions.[12] Converting the proceedings now will prejudice

[7] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-220376, PacifiCorp Combined Reply, 4 n.3 (June 27, 2022) (Combined Reply).
[8] WAC 480-07-380(2).
[9] *E.g.*, Combined Reply at 11 ¶ 24; Motion to Stay at 3-4 ¶ 10.
[10] WAC 480-07-380(2).
[11] Combined Reply at 4 n.3.
[12] For example, Staff did not substantively contest PacifiCorp's preemption claims because it had no need to do so. PacifiCorp's concession that the Commission could grant some relief not preempted by federal law defeated its motion to dismiss. See *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-220376, Staff's Response to PacifiCorp Motion to Dismiss and Motion to Stay Penalties, 15 ¶¶ 44-46 (July 12, 2022) (Staff's Response).

Staff. If PacifiCorp wants to seek summary determination, it should file an appropriate motion and the parties can take up the issues presented at that time.

### B. The Commission Should Deny The Motion To Dismiss

*11* PacifiCorp fails to show that due process, ripeness concerns, or federal preemption present an insuperable bar to relief here.[13] The Commission should, accordingly, deny the company's motion to dismiss.[14]

#### 1. PacifiCorp has received due process.

*12* On reply, PacifiCorp continues to maintain that the complaint is unconstitutionally vague and that the complaint proceeding deprives it of due process.[15] Its reply arguments fare no better than the arguments it made in its motion to dismiss, and the Commission should reject them.

##### a. The complaint is neither susceptible to a vagueness challenge nor vague, and, regardless, PacifiCorp lacks the standing to raise either argument.

*13* PacifiCorp again requests that the Commission dismiss the complaint as void for vagueness.[16] But PacifiCorp does not in reply effectively show that: (1) the vagueness doctrine applies to the complaint, (2) it has standing to claim vagueness, and (3) the complaint is vague.

*14* At the outset, Staff has already explained why PacifiCorp cannot challenge the complaint on due process vagueness grounds.[17] PacifiCorp contends in reply that it can, arguing that it has a right to challenge "the vehicle that seeks to enforce an

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[13] *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) (describing the standard for granting a motion to dismiss).
[14] *Kinney*, 159 Wn.2d at 842.
[15] Combined Reply at 4-7 ¶¶ 8-14.
[16] Combined Reply at 5-6 ¶¶ 11-12.
[17] Staff's Response at 9-10 ¶¶ 26-27.

unconstitutionally vague interpretation of Commission authorities," just as "the parties in *Sessions v. Dimaya* properly attacked the vehicle that leveled an unconstitutionally vague authority against them."[18] Here Staff lets the *Sessions* court speak for itself:

> [t]hree [t]erms ago, in *Johnson v. United States*, this Court held that part of a federal law's definition of a 'violent felony was impermissibly vague. The question in this case is whether a similarly worded clause in a statute's definition of a 'crime of violence' suffers from the same constitutional defect. Adhering to our analysis in *Johnson*, we hold that it does.[19]

PacifiCorp, in other words, misunderstands *Sessions*. The challengers there did not attack the "vehicle" as vague; they attacked the underlying statute based on the Supreme Court's holding about the vagueness of another statute.[20] PacifiCorp, in contrast, attacks the "vehicle," not the underlying statute, regulation, or order. *Sessions* lends it no aid, and PacifiCorp cannot challenge the complaint as vague.

*15* Regardless, even if PacifiCorp could challenge the complaint on constitutional vagueness grounds,[21] it offers no real argument to show that it has standing to do so. As Staff has explained, under any of PacifiCorp's reading of the complaint, PacifiCorp had to model the SCGHG in resource acquisitions in its CEIP preferred portfolio. The complaint alleges that it did not,[22] except in the context of its energy efficiency portfolio, and the Commission must accept that allegation as true in this context.[23] Because PacifiCorp must make any vagueness challenge on an as-applied basis,[24] its failure to

[18] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-220376, PacifiCorp Combined Reply, 5 ¶ 12 (July 19, 2022) (Combined Reply).
[19] *Sessions v. Dimaya*, ___ U.S. ___, 138 S.Ct. 1204, 1211, 200 L.Ed.2d 549 (2018).
[20] *Sessions*, 138 S.Ct. at 1211-12.
[21] It cannot, as just discussed.
[22] *E.g.*, Complaint at 4 ¶ 13, 5 ¶ 14, 6 ¶ 21.
[23] *Kinney*, 159 Wn.2d at 842.
[24] *City of Spokane v. Douglass*, 115 Wn.2d 171, 182, 795 P.2d 693 (1990) (where first amendment rights are not at issue, a tribunal reviews a vagueness challenge on an as-applied basis).

incorporate the SCGHG as an adder as alleged by Staff denies it standing to make its challenge.[25]

*16* Regardless, even if the vagueness doctrine applies to the complaint,[26] PacifiCorp cannot show actual vagueness. As Staff has explained,[27] in the constitutional sense, vagueness and ambiguity are different,[28] and showing vagueness requires showing "more than ambiguity."[29] PacifiCorp, in reply, contends that it shows "something more" because "PacifiCorp cannot be subject to administrative penalties when it made a good faith effort to incorporate the SCGHG adder."[30] There are three problems with that argument.

*17* First, it is utterly incoherent. PacifiCorp alleges vagueness in the *complaint*. It does not explain how it made, or even could have made, a good faith effort to comply with a document that imposed no requirements on PacifiCorp, and which did not exist at the time PacifiCorp was drafting its CEIP.

*18* Second, businesses like PacifiCorp cannot often succeed on vagueness challenges because they can avail themselves of administrative processes to clarify what legislation means.[31] PacifiCorp did not take advantage of those processes. It did not, for example, seek a declaratory order[32] as to how it should model the SCGHG. Nor did it ask for

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[25] *See City of Kennewick v. Henricks*, 84 Wn. App. 323, 326, 927 P.2d 1143 (1996) ("RCW 46.37.530(1)(c) unambiguously requires motorcycle riders to wear 'protective helmets.' Although Mr. Hendricks and Mr. Driven argue that the statute only vaguely identifies what types of helmets satisfy the requirement, they cannot dispute that the statute clearly requires helmets of *some* type. This requirement is the 'hard core' of the statute. Therefore, because they were wearing no helmets at the time of the citations, Mr. Henricks and Mr. Diven lack standing to claim vagueness as to the rules relating to acceptable types of helmets.").
[26] Again, it does not.
[27] Staff's Response at 10-11 ¶ 30.
[28] *State v. Evans*, 177 Wn.2d 186, 206, 298 P.3d 724 (2013).
[29] *Mumad v. Garland*, 11 F.4th 834, 838 (8th Cir. 2021).
[30] Combined Reply at 6 ¶ 12.
[31] *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982).
[32] *E.g.*, RCW 34.05.240 (declaratory orders under the APA); WAC 480-07-930 (declaratory orders under the Commission's regulations).

clarification of Order 01.[33] It cannot claim to have engaged in a good faith effort without at least trying some of those avenues to alleviate what it perceives of as ambiguity.

*19* And third, regardless, PacifiCorp's claims of good faith compliance must fail given the nature of its motion. The complaint alleges that PacifiCorp did not model the SCGHG in resource acquisition planning for its preferred portfolio outside of its energy efficiency portfolio.[34] Again, the Commission must accept that as true.[35] Doing nothing cannot constitute making a good faith effort.

**b. PacifiCorp will receive a meaningful opportunity to be heard.**

*20* PacifiCorp also contends that the Commission must dismiss the complaint because the Commission has already docketed its CEIP elsewhere. The Commission should reject that argument because (1) PacifiCorp will receive the opportunity for a meaningful hearing here in this docket, which provides PacifiCorp with due process, and (2) the Commission can consolidate this matter into the CEIP matter to address any overlapping issues of fact or law.

*21* As Staff noted in response, PacifiCorp offered no authority for the proposition that it had a right to have the complaint's allegations heard elsewhere.[36] PacifiCorp provides none in reply.[37] Indeed, it admits it that it can find none.[38] That PacifiCorp can find no authority on what it considers a basic due process issue should ring alarm bells for the Commission, and it should strongly suggest PacifiCorp shouts fire where no smoke appears.

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[33] *E.g.*, WAC 480-07-835(1).
[34] *E.g.*, Complaint at 4 ¶ 13, 5 ¶ 14, 6 ¶ 21.
[35] *Kinney*, 159 Wn.2d at 842.
[36] *See* Staff's Response at 8 ¶ 23.
[37] *See generally* Combined Reply at 1-14 ¶¶ 31.
[38] Combined Reply at 6-7 ¶ 13. In fairness, PacifiCorp argues its inability to find authority is due what it views as the obvious nature of the problem. Staff obviously disagrees, as explained below.

22 Turning to the merits, PacifiCorp necessarily argues that adjudicating the complaint's allegations in this docket deprives it of a meaningful opportunity to be heard in the CEIP docket.[39] There are two problems with that.

23 Initially, the Due Process Clause guarantees PacifiCorp the right to a meaningful hearing, not the right to a hearing in the docket of its choice.[40] And while a Commission-decision here could have preclusive effects as to whether PacifiCorp correctly modeled the SCGHG in the CEIP docket, it only could do so if the hearing here comports with due process.[41] As Staff has argued,[42] and PacifiCorp has acknowledged,[43] it will.

24 Second, to the extent that PacifiCorp is convinced that the allegations in this complaint must be adjudicated in the context of the CEIP, consolidation remedies its concerns.[44] Staff has filed a motion to consolidate the complaint into the CEIP docket.[45] To the extent the Commission finds some merit in PacifiCorp's argument, it should simply grant that motion and deny PacifiCorp's motion to dismiss as moot.

**2. The dispute before the Commission is ripe.**

25 Although it concedes that Staff has standing to maintain the complaint in the name of the Commission, PacifiCorp nevertheless continues to seek dismissal of the complaint on ripeness grounds because: it is a "collateral attack" that "would be illogical in other contexts,"[46] and because the Commission may "conclude" in the CEIP docket

[39] Combined Reply at 6-7 ¶ 13.
[40] *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) ("[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.").
[41] *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 307, 96 P.3d 957 (2004) ("[f]urther, the party against whom the doctrine [of collateral estoppel] is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding.").
[42] Staff's Response at 7-8 ¶ 22.
[43] Combined Reply at 6 ¶ 13.
[44] WAC 480-07-320.
[45] *Wash. Utils. & Transp. Comm'n v. PacifiCorp*, Docket UE-220376, Staff's Motion to Consolidate Proceedings (June 27, 2022).
[46] Combined Reply at 7-8 ¶ 16.

"that PacifiCorp's CEIP modelling was correct, or even require an alternative SCGHG modelling" not contemplated by the complaint.[47] Those arguments do not concern ripeness, and, in any event, lack merit.

*26* Staff has already explained why the dispute at issue is ripe.[48] PacifiCorp has already failed to perform the acts necessary to comply with RCW 19.280.030(3)(a), WAC 480-100-640(7) and -660(4), and Order 01. Accordingly, if PacifiCorp has potential liability for those failures, and Staff contends that it does, that potential liability exists now. The Commission must only decide whether what PacifiCorp has already done, or not done, carries legal consequences. The dispute is ripe for adjudication.

*27* PacifiCorp nevertheless contends that the complaint amounts to an illogical collateral attack on the CEIP docket.[49] Staff breaks that argument down into its "collateral attack" and "illogical components and finds merit in neither.

*28* The "collateral attack" component is plainly wrong. A collateral attack requires a judgment to attack, and the Commission has issued no order in the CEIP docket, and certainly no order addressing the correctness of PacifiCorp's CEIP modeling.[50] Having said that, the issues presented here may have some commonality with the issues in the CEIP docket. Accordingly, as acknowledged above, any Commission decision here could have preclusive effects in the CEIP docket. But that does not make the issue not-yet ripe for determination because any collateral estoppel considerations are different from ripeness considerations.[51]

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[47] Combined Reply at 8 ¶ 17.
[48] Staff's Response at 14 ¶ 40.
[49] Combined Reply at 7 ¶ 16.
[50] BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "collateral attack").
[51] *Compare Christensen*, 152 Wn.2d at 306 (discussing the purposes and elements of issue preclusion) with *City of Longview v. Wallin*, 174 Wn. App. 763, 777-79, 301 P.3d 45 (2013) (discussing the purposes and elements of ripeness).

*29* The "illogical"[52] component fares no better. Initially, PacifiCorp bases its conclusion on hypotheticals that do not compare. PacifiCorp did not negligently fail to submit a document necessary to the administrative process, as did the companies in its hypotheticals.[53] PacifiCorp instead failed to perform a substantive duty required by statute and regulation, and one the Commission ordered it to perform weeks before PacifiCorp submitted its CEIP.[54] And while PacifiCorp notes that many utilities rapidly cure any filing deficiencies, and that courts do not intervene in non-final agency matters because of the possibility of the agency remedying any issue, PacifiCorp's CEIP process is "final" in that it has run its course and the company has submitted the CEIP. Further, the company has shown no interest in remedying its non-compliance. PacifiCorp's incomparable hypotheticals lend it no aid in seeking dismissal.

*30* Further, PacifiCorp's belief that the Commission would dismiss the complaint in those hypotheticals on ripeness grounds lacks any legal basis. PacifiCorp does not explain why any violations at issue in its hypotheticals would not be ripe. Every fact necessary for the Commission to determine the liability of the hypothetical utility is present. What PacifiCorp describes is instead the Commission mitigating or declining to penalize a utility. While the Commission has the discretion to do so, that is wholly different from a ripeness dismissal.

*31* PacifiCorp also argues that the complaint is not ripe because the Commission may determine that it has correctly modelled the SCGHG in the CEIP docket. That argument conflates the potential for victory on the merits with ripeness.[55] Staff has presented the

[52] Combined Reply at 7-8 ¶ 16.
[53] *See* Combined Reply at 7-8 ¶ 16.
[54] RCW 19.280.030(3)(a)(ii), (iii); WAC 480-100-640(7) and -660(4); Order 01 at 3 ¶ 11, 4 ¶¶ 16, 18.
[55] Combined Reply at 8 ¶ 17.

Commission in this docket with the question of whether PacifiCorp has violated various statutes, rules, or a Commission order. The Commission may indeed decide that PacifiCorp complied with those authorities. Then again, it may not.[56] But the Commission has that choice because Staff presents it with a mature dispute where it must only decide the legal consequences of PacifiCorp's failure to incorporate the SCGHG in most of the resource acquisition decisions in its preferred portfolio. Definitionally, that dispute is ripe.[57]

### 3. PacifiCorp admits that federal law does preempt the Commission from granting some forms of relief for the allegations in the complaint.

*32* Finally, PacifiCorp contends that, under some factual circumstances, federal law may preempt the Commission's ability to provide relief, and it urges the Commission to "dismiss the [c]omplaint, if only on this issue."[58] PacifiCorp seeks relief that the Commission cannot give.

*33* PacifiCorp filed a motion to dismiss for "failure to *state a claim* on which the commission may grant relief."[59] The Commission can only grant that motion if there are no circumstances under which it can grant relief *for the claim*.[60] By PacifiCorp's own motion admission, the Commission may permissibly grant relief *for the claim*. The Commission cannot and should not dismiss the relevant *claims* when the company admits

[56] Here Staff notes that an ALJ has already found probable cause to issue the complaint, and did so based largely on factual allegations using PacifiCorp's own words.
[57] BLACK'S LAW DICTIONARY (11th ed. 2019) (defining ripeness to mean "[t]he state of a dispute that has reached, but not passed, the point where the facts have developed sufficiently to permit an intelligent and useful decision to be made. . . The requirement that this state must exist before a court will decide a controversy.").
[58] Combined Reply at 9 ¶ 19.
[59] WAC 480-07-380(1)(a) (emphasis added).
[60] *Kinney*, 159 Wn.2d at 842.

that the Commission can grant relief.[61] To the extent that PacifiCorp seeks judgment on preemption grounds, Staff will take that issue up when the company properly presents it.

### C. The Commission Should Deny The Motion To Stay

*34* PacifiCorp, alternatively, continues to ask the Commission to stay the accrual of penalties.[62] Even in reply, PacifiCorp offers no meaningful way of distinguishing what it seeks from an amendment of the complaint. And, even in reply, PacifiCorp fails to show that the balance of equities favor it. The Commission should deny the motion.

#### 1. Despite how PacifiCorp styles it, the request to stay penalties is a request to amend the complaint, not a request for a stay.

*35* As Staff has explained, a stay is "an order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding."[63] And, again, PacifiCorp does not seek to suspend a judicial proceeding or a judgment. It instead asks something else—the minimization of its legal risk. Indeed, PacifiCorp itself states as much, quite plainly, in reply, noting that "[t]he public interest does not support $730,000 in current penalties, much less an additional $1.52 million in additional penalties if the [c]omplaint proceeds to the merits."[64] Its request to cut off that liability is a de facto request to amend the complaint to alter the relief sought, whatever PacifiCorp calls it. The Commission should deny its request for permission to do so because it should not allow respondents to amend a complaint lodged against them.

*36* PacifiCorp hangs its hat on the Commission's "broad discretionary powers to 'regulate the mode and manner of all investigations and hearings,' and the power to draw

[61] *See Kinney*, 159 Wn.2d at 842.
[62] Combined Reply at 9-10 ¶ 20.
[63] BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "stay").
[64] Combined Reply at 10 ¶ 20.

from persuasive authorities including Commission regulations, Washington statutes, and Rules of Appellate Procedure."[65] But PacifiCorp provides nothing to show that any authority considers what it asks for to be a stay.[66] And again, Staff finds none.[67] PacifiCorp's inability to support its request with some kind of authority recognizing its request as a stay should trouble the Commission, and the Commission should consider it strong evidence that this is indeed not a stay, but a de facto amendment of the complaint.

*37* PacifiCorp also contends that it has a right to "preserve the status quo pending final resolution on the merits." Perhaps it does,[68] but PacifiCorp does not seek to preserve the status quo here. The Commission has issued the complaint. Under the status quo, penalties run in accordance with the relief sought in that complaint. PacifiCorp seeks to alter the potential relief that the Commission may grant. That is neither a preservation of the status quo nor a stay.

**2. The equities do not favor PacifiCorp.**

*38* PacifiCorp also contends that Staff's claim about the balance of equities uses "a false equivalency."[69] In PacifiCorp's eyes, the fact that the grant of its motion will eliminate its exposure to some set amount of penalties outweighs the fact that Staff will lose the ability to seek the exact same amount of money. That claim is mathematically insupportable: a number is equal to itself, [70] and any decrease in potential penalties PacifiCorp receives exactly equals the potential amount Staff loses the ability to seek.

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[65] Combined Reply at 10 ¶ 21.
[66] *See generally* Combined Reply.
[67] *See* Staff's Response at 19 n.90.
[68] Staff takes no position on the issue.
[69] Combined reply at 12 ¶ 28.
[70] *See* Wikipedia, Reflexive Relation, *available at* https://en.wikipedia.org/wiki/Reflexive_relation (last visited July 24, 2022) ("[a]n example of a reflexive relation is the relation "is equal to" on the set of real numbers, since every real number is equal to itself.").

*39* But, again, PacifiCorp oversimplifies.[71] It faces an increase in the potential maximum penalty if the Commission does not grant its motion, but the denial of its motion does not necessarily result in penalties against it, and it retains the ability to argue against the imposition of the subject penalties (as indeed, it retains the ability to argue against the imposition of *all* penalties). But Staff permanently loses the ability to seek the penalties at issue with the grant of the motion. The equities simply do not favor PacifiCorp.

## III. CONCLUSION

*40* For the reasons discussed, the Commission should deny PacifiCorp's motion to dismiss and its motion to stay penalties.

DATED July 26, 2022.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ *Jeff Roberson*, WSBA No. 45550
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1188
jeff.roberson@utc.wa.gov

[71] Staff's Response at 20 ¶ 56.