

**No. 18-9507**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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SIERRA CLUB,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

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PACIFICORP and STATE OF UTAH,

Intervenors - Respondents

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On Petition for Review of Final Action by the  
United States Environmental Protection Agency

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**PacifiCorp's Petition for Rehearing by the  
Panel or Rehearing En Banc**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, PacifiCorp submits the following statement:

PacifiCorp's common stock is 100% owned by PPW Holdings, LLC, a Delaware limited liability company, which is, in turn, wholly owned by Berkshire Hathaway Energy Company. Berkshire Hathaway Energy Company is a majority-owned subsidiary of Berkshire Hathaway, Inc., a publicly held corporation. No publicly held company directly owns ten percent (10%) or more of PacifiCorp's common stock.

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### **FEDERAL RULE OF APPELLATE PROCEDURE 35(b) STATEMENT**

PacifiCorp petitions this Court for en banc panel review of the attached opinion under F.R.A.P. 35, or if en banc review is not possible, a rehearing by the same panel pursuant to F.R.A.P. 40. En banc review is justified when it is “necessary to secure or maintain uniformity of the court’s decisions” or there is a “question of exceptional importance.” F.R.A.P. 35(a)(1), (2). Both are present here. As explained below, the attached opinion conflicts with Tenth Circuit law regarding statute of limitations, laches, and the appropriate level of deference accorded to federal agency interpretations of statutes. The attached opinion also conflicts with Supreme Court case law and federal regulations regarding the scope and nature of permit review under Title V of the Clean Air Act (“CAA” or “Act”), as well as Supreme Court case law regarding laches.

If the Court determines that en banc panel review is not appropriate, then the panel should rehear the issues addressed in this motion under F.R.A.P. 40, which provides for a panel to rehear “point[s] of law or fact that the petitioner believes the court has overlooked or misapprehended.” F.R.A.P. 40(a)(2). This petition for rehearing raises several points of law regarding statute of limitations, laches, deference, and the Title V program under the CAA that PacifiCorp believes the panel overlooked or misapprehended.

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