GIBSON DUNN

Theodore J. Boutrous Jr.
T: +1 213.229.7804
tboutrous@gibsondunn.com

November 13, 2026

Scott S. Harris
Clerk of Court
Supreme Court of the United States
One First Street, NE
Washington, DC 20543

Re: *PacifiCorp* v. *Sixkiller*, No. 26-318

Dear Mr. Harris:

PacifiCorp respectfully opposes respondent's request for a 60-day extension of time to respond to the petition for certiorari in this case, but PacifiCorp does not object to a shorter extension—to no later than December 8, 2026—that ensures the Court can decide the case this Term if it grants the petition.

Washington law gives PacifiCorp until November 1, 2027, to surrender tens of millions of dollars' worth of allowances to the Washington Department of Ecology. Pet. 32-33. A decision this Term would preserve PacifiCorp's ability to secure effective relief against that discriminatory exaction through a prompt decision on its motion for a preliminary injunction. To ensure that a decision on that timeline would be feasible, PacifiCorp filed its petition 28 days after the Ninth Circuit's decision.

An extension to December 8 would provide more than adequate time for respondent to prepare a response. The petition in this case was filed on September 4; respondent waived his right to respond on October 13; and this Court called for a response on October 27. If the Court extends the deadline to December 8, respondent will have had 95 days since the filing of the petition to respond, which is more than three times the ordinary 30-day response period. And respondent just last year filed a brief in opposition on a closely related question under the dormant Commerce Clause involving the same statutory scheme in *Invenergy Thermal LLC* v. *Sixkiller*, No. 24-1027.

Respondent's attempts to minimize the harms of further delay are unpersuasive. Although respondent notes that PacifiCorp has previously been forced to surrender allowances, the remaining allowances are worth tens of millions of dollars. Pet. 9. Although respondent predicts that a case could not reach final judgment by November 1, 2027, PacifiCorp could renew its request for a preliminary injunction, which the lower courts did not address solely because they gave the wrong answer to the question presented,

Pet. App. 21a, 74a, and could proceed immediately to the summary-judgment stage. A decision on either would allow PacifiCorp an opportunity to prevent any further discriminatory exactions. And although PacifiCorp agrees with respondent that the case will not become moot in November 2027, respondent's excuses for delay are not a compelling reason to insulate discriminatory exactions worth tens of millions of dollars from scrutiny. The Court should not grant an extension that prevents the case from being heard this Term.

Respectfully submitted,

/s/ *Theodore J. Boutrous, Jr.*
THEODORE J. BOUTROUS, JR.
Counsel for Petitioner

cc: Counsel of Record