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June 21, 2024

VIA ELECTRONIC DELIVERY

Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd
Building 8 Suite 201A
Boise, ID 83714

Re: CASE NO. PAC-E-24-05
IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER REQUESTING APPROVAL OF $62.4 MILLON ECAM DEFERRAL

Attention: Commission Secretary

Attached for filing in the above referenced docket, please find Rocky Mountain Power's Petition for Reconsideration.

Please contact this office with any questions.

Sincerely,

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER REQUESTING APPROVAL OF $62.4 MILLON ECAM DEFERRAL	)))))	**CASE NO. PAC-E-24-05** **ROCKY MOUNTAIN POWER'S PETITION FOR RECONSIDERATION**

I. INTRODUCTION

1. Pursuant to Idaho Code § 61-626 and Rule 331 of the Rules of Procedure of the Idaho Public Utilities Commission (the "Commission"), Rocky Mountain Power, a division of PacifiCorp (the "Company"), hereby submits its Petition for Reconsideration ("Petition"), in part, of Order No. 36207, issued by the Commission in this proceeding on May 31, 2024 (the "Order"). For the reasons stated herein, the Company respectfully requests the Commission reconsider its decision to disallow from the Company's 2023 Energy Cost Adjustment Mechanism ("ECAM") rate adjustment approximately $2.3 million, representing the costs incurred by the Company to comply with the Washington Climate Commitment Act ("WCCA").[1]

2. The Order addresses recovery of the costs to provide power to Idaho customers from the Chehalis natural gas-powered generation facility ("Chehalis") located in Washington State. These costs include Idaho's share of the costs the Company incurs to purchase allowances

[1] RCW § 70A.65.005 – 70A.65-901 (2024).

necessary to comply with the WCCA, totaling approximately $2.3 million. The Order concludes that expenditures on WCCA allowances do not constitute a tax, dispatch cost, or any other type of expense that is recoverable in the Company's Idaho rates. The disallowance is based on interpretation the 2020 PacifiCorp Inter-Jurisdictional Allocation Protocol (the "2020 Protocol"), which was adopted in Idaho by order of the Commission.[2] The Order finds that "the WCCA is more akin to a [Renewable Portfolio Standard]" under the terms of the 2020 Protocol, and reasons that:

> The 2020 Protocol defines a "Portfolio Standard" as "a law or regulation that requires [the Company] to acquire … [r]esources in a prescribed manner." 2020 Protocol, Section 3.1.2.1. Although the Company owned the Chehalis generating facility before the WCCA was enacted, it lost the right to operate it to generate electricity to serve customers outside of Washington State without purchasing allowances when the legislation became effective. The Company did not *acquire* that right again until after it obtained allowances as prescribed by the Washington State legislature.[3]

The Order concludes that Washington Clean Energy Transformation Act ("CETA")[4] and WCCA "work together to implement a state-specific initiative by creating portfolio standards under CETA and then distributing no-cost allowances to CETA-obligated utilities through the WCCA."[5] The Commission determines that the "2020 Protocol is designed and intended to isolate such state-specific policy costs and recover those costs from customers in the states where the policies are created."[6]

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[2] *In The Matter of Rocky Mountain Power's Application for Approval of the 2020 PacifiCorp Inter-Jurisdictional Allocation Protocol*, Case No. PAC-E-19-20, Order No. 34640 (April 22, 2020). The references to the 2020 Protocol in this Motion are to 2020 Protocol as submitted by the Company as Exhibit No. 1 to the testimony of Joelle R. Steward in Case No. PAC-E-19-20. In 2023, the Commission approved a "modification of Order No. 34640 to approve the 2020 Protocol as amended through December 31, 2025." *In the Matter of Rocky Mountain Power's Petition for Approval of an Extension of the 2020 Inter-Jurisdictional Allocation Protocol*, Case No. PAC-E-23-13, Order No. 35984 at 3 (November 2, 2023).
[3] Order at 11.
[4] RCW §§ 19.405.010 – 19.405.901 (2024).
[5] Order at 12.
[6] *Id.*

3. For the reasons detailed in this Petition, the Order includes errors of law and fact essential to the Commission's decision to disallow recovery of WCCA compliance costs that are necessary to provide the benefits of Chehalis power to Idaho customers. The Order relies on the 2020 Protocol but does not apply the 2020 Protocol as written and reaches conclusions that are not supported by its text. The decision also relies on interpretations of the WCCA and the CETA that are not supported by the provisions of either statute. In addition, there is good cause to reconsider the Order due to its departure from fundamental cost causation principles, and to avoid violations of constitutional dormant Commerce Clause principles. In the alternative, if the Commission does not revise the Order to include WCCA costs in Idaho rates, PacifiCorp requests that, consistent with the 2020 Protocol, the Commission remove the Chehalis plant as a resource allocated to Idaho.

II. LEGAL STANDARD

4. Section 61-626 of the Idaho Code provides that "after an order has been made by the commission, any corporation, public utility or person interested therein shall have the right, within twenty-one (21) days after the date of said order, to petition for reconsideration in respect to any matter determined therein."[7] Rule 331.01 of the Commission's Rules of Procedure provides that "[p]etitions for reconsideration must specify (a) why the order or any issue decided in it is unreasonable, unlawful, erroneous or not in conformity with the law, and (b) the nature and quantity of evidence the petitioner will offer if reconsideration is granted."[8]

5. If the Commission grants reconsideration and "finds that the grounds upon which the petition is granted present only issues of law and not of fact or issues of fact not requiring hearings, the Commission may direct that these grounds be considered on reconsideration

[7] Idaho Code § 61-626(a).
[8] IDAPA 31.01.01, Rules of Procedure of the Idaho PUC, Rule 331.01—Petition for Reconsideration.

without further submission of evidence or a hearing … or by submission of briefs, memoranda … or otherwise."[9]

6. The Idaho Supreme Court has explained that "[t]he purpose of an application for rehearing is to afford an opportunity to the parties to bring to the attention of the Commission in an orderly manner any question theretofore determined in the matter and thereby afford the Commission an opportunity to rectify any mistake made by it before presenting the same to this Court."[10]

III. ARGUMENT

7. The Company requests the Commission reconsider the disallowance of approximately $2.3 million in costs that the Company was required to incur to comply with the WCCA and deliver power from Chehalis to its Idaho customers. The Company's testimony demonstrates that Chehalis power provides substantial benefits to the Company's Idaho customers. Company witness Jack Painter testified that net power costs ("NPC") for Idaho customers "would have increased by $23.6 million on a total-Company basis if the generation from Chehalis were removed."[11] The Commission's Order disallowed WCCA costs that are part of delivering power from Chehalis, but accepted the benefits that Chehalis power provides to Idaho customers.

8. The Order includes errors of law and fact essential to the Commission's decision to disallow recovery of WCCA compliance costs. The Order relies for its ultimate decision on the 2020 Protocol but fails to apply the 2020 Protocol as written, reaching conclusions that have no support in its text.

[9] *Id.*, Rule 332 – Procedure at Reconsideration.
[10] *Washington Water Power Co. v. Kootenai Env't. Alliance,* 99 Idaho 875, 879, 591 P.2d 122, 126 (1979).
[11] Direct Testimony of Jack Painter, at Painter, Di-25 (April 1, 2024).

9. On reconsideration, the Company urges the Commission to correct the Order by allowing recovery in ECAM of the $2.3 million in WCCA compliance costs incurred to provide Chehalis power to Idaho customers. In the alternative, if the Commission does not revise the Order to include WCCA costs in Idaho rates, PacifiCorp requests that, consistent with the 2020 Protocol, the Commission remove the Chehalis plant as a resource allocated to Idaho.

10. If the Commission grants rehearing, the Company will present additional evidence regarding the workings of the WCCA and CETA, and the impact of those Washington State mandates on power production from Chehalis. If the Commission grants rehearing only to consider the legal issues regarding interpretation of the 2020 Protocol, the Company is prepared to submit additional legal briefing or other information requested by the Commission.

A. The Company's purchase of WCCA emissions allowances does not constitute the acquisition of "Resources" as defined in the 2020 Protocol.

11. The Order acknowledges that the Company "owned the Chehalis generating facility before the WCCA was enacted."[12] The Commission approved the Company's acquisition of Chehalis in 2009, pursuant to a stipulation in which the parties agreed that its acquisition was "a prudent decision and in the public interest."[13] Commission Staff concluded in the 2009 proceeding that "the acquisition of the Chehalis plant is in the public interest and provides a favorably priced, flexible resource that will assist the Company in meeting the resource needs of its customers at the lowest reasonable cost."[14]

12. For purposes of the 2020 Protocol, Chehalis is categorized as a "Resource," because it is a "Company-owned generating unit."[15] The definition of "Resource" also includes

[12] Order, at 11.
[13] *In the Matter of The Application of PacifiCorp dba Rocky Mountain Power for Approval of Changes to Its Electric Service Schedules*, Case No. PAC-E-08-07, Order No. 30783 at 6 (April 16, 2009).
[14] *Id.*
[15] 2020 Protocol, Appendix A at 7 (Definition of "Resource").

any Company-owned "plant, mine, long-term Wholesale Contract, Short-Term Purchase and Sale, Non-firm Purchase and Sale, or QF contract."[16] The definition does not include emissions allowances, renewable energy certificates, or other financial instruments that impact the cost of constructing or dispatching a Resource.

13. Under the 2020 Protocol, "Resources [are] allocated to one of two categories for inter-jurisdictional allocation purposes: System Resources or State Resources."[17] Historically, the Commission has treated existing Resources like Chehalis as "System Resources." The 2020 Protocol provides that for System Resources, "[g]eneration-related dispatch costs and associated plant will be" system allocated.[18] To qualify as a "State Resource" under the 2020 Protocol, the Resource must fit into one of three categories identified in Section 3.1.2.1: "Demand-Side Management Programs," "Portfolio Standards," or "State-Specific Initiatives."[19] If Resources do not fit in one of the three "State Resources" categories, they "are System Resources, which constitute the substantial majority of PacifiCorp's Resources."[20] The analysis in the Order includes references to "Portfolio Standards" and "State-Specific Initiatives," which are defined terms in the 2020 Protocol.[21]

14. The Order's disallowance of WCCA costs first relies on the "Portfolio Standard" definition. The Commission held that "[t]he 2020 Protocol defines 'Portfolio Standard' as 'a law

[16] *Id.*
[17] 2020 Protocol, Section 3.1.2.
[18] 2020 Protocol, Section 3.1.7.
[19] 2020 Protocol, Section 3.1.2.1. If Resources do not fit in one of the three "State" categories, they "are System Resources, which constitute the substantial majority of PacifiCorp's Resources." *Id.*
[20] *Id.* Section 5.8 of the 2020 Protocol notes that "[h]istorically, [State-Specific initiatives] have included … programs such as incentive programs and customer and community energy generation programs, but have not included local fees or taxes related to the ongoing operation of existing transmission and generation facilities within a State."
[21] "Portfolio Standard" is defined in Appendix A – Definitions; "State-Specific Initiatives" is defined in Section 3.1.2.1.

or regulation that requires [the Company] to acquire … [r]esources in a prescribed manner."[22] This aspect of the Order misconstrues a key term in the "Portfolio Standard" definition. The full definition states:

> *"Portfolio Standard" means a law or regulation that requires PacifiCorp to acquire* (a) a particular type of Resource, (b) a particular quantity of Resources, (c) *Resources in a prescribed manner*, or (d) Resources located in a particular geographic area.[23] (emphasis on the terms quoted in the Order).

The Order omits the use of the defined term "Resources," substituting "[r]esources" in its place. As discussed above, when PacifiCorp "acquires" a "Resource," that means acquisition of a generating facility like Chehalis or the other physical or contractual assets used in the definition of "Resource." The acquisition of WCCA allowances does not constitute acquisition of "Resources in a prescribed manner."

15. When the Order removes the defined term "Resource," it implies that WCCA requires the Company obtain "[r]esources" that include WCCA allowances. The Order concludes that once the Washington State legislature enacted the WCCA, the Company "lost the right to operate [Chehalis] to generate electricity to serve customers outside of Washington State without purchasing allowances when the legislation became effective."[24] According to this interpretation, the "Company did not *acquire* that right again until after it obtained allowances as prescribed by the Washington State legislature."[25] In this way, the Order imagines the WCCA required the Company to "reacquire" Chehalis under a Washington State "Portfolio Standard."

16. This interpretation of the 2020 Protocol is erroneous for two reasons. First, omission of the defined term "Resource" impermissibly changes the meaning of the 2020

[22] Order at 11.
[23] 2020 Protocol, Appendix A at 6 (definition of "Portfolio Standard").
[24] Order at 11.
[25] *Id.*

Protocol provisions relied on by the Order. When the defined term "Resource" is used as written in the 2020 Protocol section quoted in the Order, it is clear that there is nothing in the WCCA that would require the Company to acquire, "in a prescribed manner," a "Company-owned generating unit, plant, mine, long-term Wholesale Contract, Short-Term Purchase and Sale, Non-firm Purchase and Sale, or QF contract."[26] Unlike a true state "Portfolio Standard" that requires the Company to purchase specific types of Resources, the WCCA does not contemplate acquisition of Resources as defined in the 2020 Protocol.

17. Second, nothing in the WCCA caused the Company to lose "the right to operate [Chehalis] to generate electricity to serve customers outside of Washington State without purchasing allowances."[27] The Company's expenditures for allowances certainly would not have been made if not mandated by Washington State law, but failure to comply does not require that Chehalis (or any other generator) shut down exports of power from Washington State. Like many state laws, the WCCA specifies how entities subject to the law demonstrate compliance.[28] The statute (and implementing regulations) also delineate actions the state may take to enforce compliance. WCCA enforcement includes imposition of "penalty allowances" the offending entity must purchase, and financial penalties ranging from $10,000 to $50,000 per day for various types of violations.[29] The WCCA does not, however, provide that power generators subject to the law must immediately stop generating power (whether for use in Washington or elsewhere) if they do not obtain WCCA allowances.

[26] 2020 Protocol, Appendix A at 7 (Definition of "Resource").
[27] Order at 11.
[28] *See* RCW § 70A.65.200(1): "All covered and opt-in entities are required to submit compliance instruments in a timely manner to meet the entities' compliance obligations and shall comply with all requirements for monitoring, reporting, holding, and transferring emission allowances …."
[29] *See* RCW 70A.65.200(2) – (5); Washington Administrative Code 173.446-610(2) – (6).

18. Because the WCCA does not (and never did) authorize shutting down Chehalis power exports, there is no "re-acquisition" of Chehalis that fits it into the 2020 Protocol's "Portfolio Standard." Rather, Chehalis should properly remain categorized as a "System Resource," and its costs (including WCCA allowance expenses) and benefits (including the power used by Idaho customers) should be allocated across the Company's system rather than to a single state.

B. CETA is a "State-Specific Initiative" as defined in the 2020 Protocol. WCCA is not.

19. The Order contends that "the CETA and WCCA work together to implement a state-specific initiative by creating portfolio standards under CETA and then distributing no-cost allowances to CETA-obligated utilities through the WCCA."[30] Based on this supposition, the Order concludes that the "2020 Protocol is designed and intended to isolate such state-specific policy costs and recover those costs from customers in the states where the policies are created."[31]

20. The Company agrees that CETA is a State-Specific Initiative under the 2020 Protocol.[32] As required by the terms of the 2020 Protocol, all incremental *costs* and *benefits* of CETA compliance are appropriately situs assigned to Washington State. The situs-assigned costs include those that may be incurred in the future by utilities to re-order their generation portfolios in Washington State to achieve CETA's mandatory reductions of carbon-emitting electric generation in the state. On the benefits side of the equation, the Washington State legislature believed that CETA would be important to Washington "transforming its energy supply,

[30] Order at 12.
[31] *Id.*
[32] As the term is used in the 2020 Protocol, "State-Specific Initiatives include, but are not limited to, the costs and benefits of incentive programs, net-metering tariffs, feed-in tariffs, capacity standard programs, solar subscription programs, electric vehicle programs, and the acquisition of renewable energy certificates." 2020 Protocol, Section 3.1.2.1.

modernizing its electricity system, and ensuring that the benefits of this transition are broadly shared throughout the state."[33]

21. Those perceived benefits, along with costs of pursuing them (including acquisition of new Resources), are all properly situs assigned to Washington State under the terms of the 2020 Protocol. Customers in Idaho and other states are not required to pay for the Company's incremental costs to comply with CETA, and the benefits of CETA are all designed to flow to Washington State customers.

22. By contrast, the WCCA is not a State-Specific Initiative or a Portfolio Standard as those terms are defined in the 2020 Protocol. The WCCA requires that the Company secure an allowance for each metric ton of carbon dioxide equivalent emitted from Chehalis; allowance costs are directly tied to the level of generation at the plant.[34] The Company's WCCA compliance obligations are independent of its obligations under CETA. Moreover, unlike CETA, WCCA creates emissions reduction obligations beyond the utility industry, impacting companies that have no connection to CETA. The Company demonstrates WCCA compliance by retiring allowances for any greenhouse gas output from Chehalis within the State of Washington.[35] WCCA compliance is not related to acquisition of any type of generation Resource, or creation of a utility demand response program – and thus does not qualify as a State-Specific Initiative subject to situs assignment pursuant to the 2020 Protocol.

23. The Order relies on an unsubstantiated interdependence between CETA and WCCA to support its finding that WCCA allowances are the type of "state-specific policy costs" that should be situs-assigned to Washington State. The Company's legal obligation to pay for

[33] RCW 19.405.010 (2024) (Legislative findings supporting CETA).
[34] RCW § 70A.65.010(1).
[35] RCW § 70.65.070.

allowances for the Chehalis power used by Idaho customers would exist even if CETA did not. WCCA cross-references CETA only when addressing what costs Washington State customers are required to pay for allowances. The provisions of WCCA that create the costs caused by use of Chehalis to benefit Idaho customers (and other customers outside Washington) arise from WCCA alone. And WCCA does not meet any of the 2020 Protocol criteria for situs assignment of the Company's costs. The Order incorrectly references the limited interaction of WCCA and CETA to mischaracterize the Company's obligation to procure allowances to serve Idaho customers as a cost that is appropriately situs assigned to Washington State – a jurisdiction where the Company is legally prohibited from recovering those costs.[36]

24. Moreover, similar to the Order's misapplication of the 2020 Protocol's "Resource" definition, the Order holds that, under the 2020 Protocol, "CETA and WCCA work together to implement a *state-specific initiative* by creating *portfolio standards* under CETA and then distributing no-cost allowances."[37] As discussed above, this interpretation of the highlighted words, which are defined terms in the 2020 Protocol, is inconsistent with the meaning assigned to those terms in the 2020 Protocol itself. Further, the error in the Order is apparent from the statement that these two separate laws impose only *one* cost, stating that the two laws create a "state-specific initiative" using the singular rather than the plural to indicate there is just one "initiative" that the Order is examining. The Order errs because CETA and WCCA must be examined separately for the separate costs and benefits they create. CETA costs and benefits are

[36] Under the Washington Department of Ecology's (WDE) current interpretation of the law, the Company is not permitted to share no-cost WCCA allowances with its non-Washington customers. The Company attempted to persuade WDE to permit PacifiCorp to share the benefits of no-cost allowances with customers in other states that receive power from Chehalis, but WDE required that no-cost allowances be used exclusively to benefit Washington customers. *See* State of Washington, Dep't. of Ecology, Publication 22-02-046, Concise Explanatory Statement Chapter 173-446 WAC Climate Commitment Act Program at 239 (Sept. 2022) (available at: https://apps.ecology.wa.gov/publications/documents/2202046.pdf) (last visited June 13, 2024).
[37] Order at 12 (emphasis supplied).

a State-Specific Initiative; WCCA costs and benefits are not. This is clear from the plain text of 2020 Protocol sections 3.1.2.1 (defining situs-assigned State-Specific Initiative costs) and 3.1.7 (defining system-allocated generation-related dispatch costs).

C. The Order impermissibly disconnects allocation of Chehalis "costs and benefits."

25. Assuming for argument that Chehalis qualifies for treatment as a situs-assigned State-Specific Initiative Resource, the 2020 Protocol requires that both the "*costs and benefits* associated with Interim Period Resources acquired in accordance with a State-specific initiative" be "assigned on a situs basis to the State adopting the initiative."[38] Consistent with fundamental ratemaking principles, the 2020 Protocol provisions on situs-assignment of "state specific policy costs"[39] do not permit assignment of costs to be disconnected from assignment of benefits.

26. The record identifies the costs PacifiCorp incurs to comply with WCCA requirements for the power from Chehalis used by Idaho customers. In 2023, the Company "made $42 million in purchases, on a total-company basis, to comply with" WCCA, or approximately $2.3 million Idaho-allocated.[40] The substantial benefits of Chehalis power to Idaho customers are also documented in the record. Without Chehalis, forecast NPC would increase by approximately $23.6 million.[41] Even accounting for WCCA compliance costs, generation from Chehalis results in significant net benefits to Idaho customers.

27. The 2020 Protocol requires that both the "costs and benefits" of a Resource classified as a State-Specific Initiative be situs assigned if either is situs assigned.[42] The Order does not comply with this requirement of the 2020 Protocol. Rather, the Order situs assigns the

[38] 2020 Protocol, Section 3.1.2.1 (emphasis supplied).
[39] Order at 12.
[40] Direct Testimony of Jack Painter, at Painter, Di-24 (April 1, 2024).
[41] *Id*., at Painter, Di-25.
[42] 2020 Protocol, Section 3.1.2.1.

WCCA costs required to provide power to Idaho customers entirely to Washington State but maintains the benefits Idaho customers receive from their share of the power generated at Chehalis.

28. This approach is inconsistent with the terms of the 2020 Protocol, but also fails to observe the basic ratemaking principle that the costs of a service should be recovered from those who benefit from it. The Commission has frequently referenced its determination to "adhere to the principles of cost causation" when it sets utility rates.[43] The 2020 Protocol cost allocation structure tracks traditional cost causation principles. When the 2020 Protocol situs assigns a Resource acquired in accordance with a State-Specific Initiative, it assigns the "[c]osts and benefits associated with" that Resource.[44] The 2020 Protocol's cost allocation methodology demands that costs not be disconnected from benefits—and that the benefits are those that arise from use of the Resource in question.

29. The Order holds that the 2020 Protocol "is designed to isolate … state-specific electricity policy costs."[45] As detailed above, the 2020 Protocol provides the State Resources category for identifying Resources that are attributable to "state-specific electricity policy costs." If the Resource satisfies the criteria for State Resources that constitute State-Specific Initiatives, that appropriately results in situs assignment of those costs. Even in such cases, however, allocation and assignment of costs pursuant to the 2020 Protocol are not "isolated" from allocation and assignment of the benefits a state's customers receive from the Resource.

30. The Order contravenes that basic allocation rule, enabling Idaho customers to continue to benefit from Chehalis generation while disallowing costs required to provide it to them.

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[43] *In the Matter of Suez Water Idaho Inc.'s Petition for an Exemption from Utility Customer Relations Rules 311(3) and (5)*, Case No. SUZ-W-19-01, Order No. 34405 at 6 (August 13, 2019). *See also, In the Matter of the Application of Intermountain Gas Company to Change its Rates and Charges for Natural Gas Service in the State of Idaho*, Case No. INT-G-16-02, Order No. 33757 at 35 (April 28, 2017) ("We continue to adhere to the principle of cost causation, namely that the cost causing customer is responsible for the costs associated with its service.").
[44] 2020 Protocol, Section 3.1.2.1.
[45] Order at 12.

This outcome is entirely at odds with the plain language of the 2020 Protocol and the cost causation principles embraced by the Commission.

D. The Order applies the 2020 Protocol in a manner that discriminates against the Company as a utility providing interstate services.

31. In December 2023, PacifiCorp filed a complaint in federal district court in Tacoma, Washington, asserting claims regarding the constitutionality of certain provisions of the WCCA under the dormant Commerce Clause of the U.S. Constitution.[46] Unless and until a court rules on the issues the Company has raised, it must comply with the law. The Company is also challenging the Oregon[47] and Wyoming[48] state commission decisions that disallowed recovery of WCCA costs attributable to Chehalis power used in those states.

32. Whatever the merits of dormant Commerce Clause challenges to the WCCA, the Commission's application of the 2020 Protocol creates an outcome that itself offends dormant Commerce Clause principles. The Commission's Order misapplies the neutral, non-discriminatory terms of the 2020 Protocol to create an outcome that, in practical effect, results in "purposeful discrimination against out-of-state economic interests."[49]

33. WCCA costs are similar to other inter-regional taxes or transfer costs resulting from, for example, the California Cap and Trade program or the Western Energy Imbalance Market. The Order denies the Company recovery of costs that are functionally the same as other state assessments that it is authorized to recover in its rates. This results in interstate power

[46] *PacifiCorp v. Watson*, Case No. 3:23-cv-6155, Complaint (WD Wash, Dec. 15, 2023).
[47] *See PacifiCorp v. Public Utility Commission of Oregon*, *et al.*, Oregon Court of Appeals, Case No. A183803.
[48] *See PacifiCorp d/b/a Rocky Mountain Power v. The Public Service Commission of Wyoming, et al.*, District Court of the First Judicial District, County of Laramie, State of Wyoming, Docket No. 2024-CV-0202385.
[49] *Nat'l Pork Producers Council v. Ross*, 598 US 356, 143 S. Ct. 1142, 1154 (2023). The U.S. Supreme Court has overturned state administrative agency decisions, as well as state statutes and regulations, based on violations of the dormant Commerce Clause. *See, e.g., New England Power Co. v. New Hampshire*, 455 US 331 (1982) (overturning an order of the New Hampshire Public Utilities Commission); *West Lynn Creamery, Inc. v. Healy*, 512 US 186 (1994) (invalidating a pricing order issued by the Massachusetts Department of Food and Agriculture).

transmitted from Washington State being treated differently than interstate power that PacifiCorp produces in the other states in its service territory. The result of the Commission's decision is to protect Idaho consumers from added costs in their rates, while leaving the Company unable to recover $2.3 million in legal compliance costs that it cannot avoid. In this way, the Order converts the 2020 Protocol from a reasonable cost allocation methodology into a means of discriminating against PacifiCorp as an interstate electric utility.

34. In the Commerce Clause context, "discrimination" means "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter."[50] A decision in 2023 summarized interstate commerce discrimination, overturning a Kentucky law favoring locally produced coal, noting that "[t]he real question . . . is not whether [the state law] *differentiates* between in-state and out-of-state coal but whether it impermissibly *discriminates*. . . . That is, does the law benefit in-staters and burden outsiders?"[51] Impermissible discrimination "is not limited to attempts to convey advantages on local merchants; it may include attempts to give local consumers an advantage over consumers in other States."[52]

34. This "antidiscrimination principle lies at the 'very core' of . . . dormant Commerce Clause jurisprudence."[53] Even if a state law, regulation, or order does not discriminate on its face, its "practical effects may also disclose the presence of a discriminatory purpose."[54] In examining state actions impacting interstate commerce, U.S. Supreme Court cases often find discriminatory

[50] *Or. Waste Systems, Inc. v. Dep't of Env't Quality of Or.*, 511 US 93, 99 (1994).
[51] *Foresight Coal Sales, LLC v. Chandler*, 60 F4th 288, 297-98 (6th Cir 2023), *cert den sub nom Chandler v. Foresight Coal Sales, LLC*, 144 S. Ct. 80 (Oct. 2, 2023) (emphases in original).
[52] *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 US 564, 577-78 (1997) (quoting *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 US 573, 580 (1986)).
[53] *Nat'l Pork Producers*, 143 S. Ct. at 1153.
[54] *Id.* at 1157.

practical effects in the cases of "state laws that impose burdens on the arteries of commerce, on trucks, trains, and the like."[55]

35. Here, the Commission interprets the 2020 Protocol, which was approved by a Commission order and which, on its face, is neutral and serves a legitimate purpose. The 2020 Protocol is, in fact, a methodology for managing the "arteries of commerce" among the states served by PacifiCorp.[56] The Commission's interpretation of the 2020 Protocol, however, results in discriminatory practical effects—allocating the benefits but not the costs of Chehalis power to Idaho customers.

36. The misapplication of the 2020 Protocol gives Idaho consumers an advantage to the detriment of the Company's provision of interstate electricity. PacifiCorp cannot legally recover from its Washington customers the WCCA costs for Chehalis power used to serve Idaho. Nevertheless, the Order disallows PacifiCorp's WCCA costs when it sells Chehalis power in interstate commerce to Idaho customers—sales that require PacifiCorp to incur the costs of securing WCCA allowances.

37. The Company urges the Commission to reconsider the Order to ensure it does not conflict with the dormant Commerce Clause. The Commission could achieve this by: (a) applying the neutral and non-discriminatory 2020 Protocol provisions as written and finding that Chehalis remains a "System Resource"; or (b) maintaining the Commission's position that Chehalis is a "State Resource" but removing the benefits of Chehalis from Idaho NPC.

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[55] *Id.* at 1166 (Sotomayor, J., concurring).

[56] *See NextEra Cap. Holdings, Inc. v. Lake*, 48 F4th 306, 321-22 (5th Cir. 2022), *cert. denied sub nom Lake v. NextEra Cap. Holdings, Inc.*, 144 S. Ct. 485 (December 11, 2023) (The "interstate grid [is] much closer to the heartland of interstate commerce than the wine stores, dairies, or waste processing facilities that have faced dormant Commerce Clause scrutiny. The Supreme Court recognized the interstate character of the electricity market a decade before it recognized that Congress could regulate factories because of their effect on interstate commerce.") (internal citations omitted).

E. If the Commission will not reconsider its disallowance of WCCA compliance costs, it should revise the Order to remove Chehalis power from Idaho rates.

38. For the reasons discussed herein, if the Commission applies the 2020 Protocol according to its terms, Chehalis should be designated as a System Resource, with Idaho paying its share of WCCA compliance costs commensurate with its share of all other generation-related costs. This outcome is consistent with the terms of the 2020 Protocol, the applicable provisions of WCCA and CETA, and adheres to the Commission's cost causation principles. Otherwise, the Commission would shift the costs of complying with the WCCA to the Company, essentially creating a $2.3 million unrecoverable disallowance for compliance with another state's law.

39. If the Commission will not reconsider its determination regarding situs assignment of WCCA compliance costs, the Company requests that Idaho customers forgo the benefits of Chehalis's generation. This outcome is reasonable and consistent with governing law if Idaho customers do not pay compliance costs for Chehalis.

40. The Company certainly does not favor this outcome. It would increase Idaho NPC: the removal of Chehalis from Idaho rates would result in a forecast NPC increase of approximately $23.6 million. Nevertheless, if the Commission remains determined to designate Chehalis WCCA compliance costs as part of a State-Specific Initiative, the Commission should act consistently with the terms of the 2020 Protocol and remove both the costs and benefits of Chehalis from Idaho rates. Otherwise, PacifiCorp will be required to subsidize Idaho rates in a manner that is inconsistent with the approved cost allocation methodology, contrary to established ratemaking principles, and results in rates that are not just and reasonable.

IV. CONCLUSION

41. The Commission should reconsider its decision to situs assign WCCA compliance costs to Washington State, apply the 2020 Protocol provisions as written, and find that Chehalis

remains a "System Resource" for cost allocation purposes. Alternatively, if the Commission maintains its position that Chehalis is a "State Resource" under the 2020 Protocol, it should revise the Order to remove both the costs and benefits of Chehalis generation from Idaho NPC.

DATED this 21st day of June, 2024

Respectfully submitted,

ROCKY MOUNTAIN POWER

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CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of June, 2024, served **Rocky Mountain Power's Petition for Reconsideration** in Case No. PAC-E-24-05, by e-mailing a copy to the following:

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