BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ROCKY MOUNTAIN POWER'S APPLICATION FOR APPROVAL OF $62.4 MILLION ECAM DEFERRAL	)))))	**CASE NO. PAC-E-24-05** **ORDER NO. 36274**

On April 1, 2024, PacifiCorp dba Rocky Mountain Power ("Company") applied for authorization to adjust its rates under the Energy Cost Adjustment Mechanism ("ECAM"). The Company sought an order approving approximately $62.4 million in ECAM deferred costs and a 10.5 percent increase to Electric Service Schedule No. 94, Energy Cost Adjustment ("Schedule 94").

On May 31, 2024, the Commission approved the Company's Application in part, disallowing recovery of Washington Climate Commitment Act ("WCCA") compliance costs and authorizing a revised ECAM deferral amount of $60,093,960. Order No. 36207.

On June 21, 2024, the Company petitioned for reconsideration of Order No. 36207 ("Petition"). No responses to the Petition were filed.

With this Order, we grant the Company's Petition as described below.

ORDER NO. 36207

In Order No. 36207, the Commission disallowed recovery of costs the Company incurred to comply with the WCCA and authorized a revised ECAM deferral amount of $60,093,960. As relevant to the issues raised in the Petition, Order No. 36207 provides:

> We conclude that allowing recovery of costs incurred to comply with the WCCA from Idaho customers would violate the 2020 [PacifiCorp Inter-Jurisdictional Allocation] Protocol, which governs the allocation of costs and benefits of Company resources (including Company-owned generating facilities like the Chehalis facility) across the jurisdictions in which the Company operates.
>
> We reject the Company's argument that the costs it incurred to comply with the WCCA are like other taxes imposed on the Company, like the Wyoming Wind Tax. *See Wyo. Stat. Ann.* § 39-22-104 (imposing a tax of $1.00 on every MWh of wind energy generated in state). Rather, we conclude the WCCA is more akin to [a Renewable Portfolio Standard] as it is designed to reduce the use of fossil fuel generation to serve load. The 2020 [PacifiCorp Inter-Jurisdictional Allocation] Protocol defines a "Portfolio Standard" as "a law or regulation that requires [the Company] to acquire . . . [r]esources in a prescribed manner." 2020 [PacifiCorp Inter-Jurisdictional Allocation] 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. The costs of resource procurement standards like this are situs-assigned under the 2020 [PacifiCorp Inter-Jurisdictional Allocation] Protocol. Thus, costs the Company incurred to comply with the WCCA are appropriately assigned to customers in Washington State.

Order No. 36207 at 11 (Footnotes omitted.)

Order No. 36207 noted that other aspects of the WCCA support this conclusion. Specifically, Order No. 36207 observed that an auction determined the cost of the allowances, not the Washington legislature as with other taxes. Moreover, despite acknowledging the resemblance of isolated WCCA provisions to a tax or generation-dispatch costs, the Commission reasoned that the complete statutory scheme surpassed this by providing no-cost allowances only to Washington State customers.

Order No. 36207 further noted the link between the WCCA and another Washington State climate initiative—the Clean Energy Transformation Act ("CETA"). During federal court proceedings challenging the WCCA, the Washington Department of Ecology indicated that no-cost allowances are provided under the WCCA to ensure that Washington customers are not charged for costs associated with transitioning to non-greenhouse gas emitting generation under both the WCCA and CETA, which requires utilities serving Washington customers to eliminate greenhouse gas emissions by 2045. Order No. 36207 reasoned that the portfolio standards established under CETA and provision of no-cost allowances under WCCA combined to implement a state-specific initiative that Idaho customers should not be responsible for. The Commission noted that one purpose of the 2020 PacifiCorp Inter-Jurisdictional Allocation Protocol ("2020 Protocol") is to isolate such state-specific policy costs for recovery from customers where the policies are created.

COMPANY'S PETITION

The Company contends the Commission erred in Order No. 36207 by (1) misinterpreting the 2020 Protocol in various ways; (2) impermissibly separating the costs and benefits of Chehalis; and (3) discriminating against the Company for engaging in interstate commerce. Alternatively, if Chehalis is not designated a System resource under the 2020 Protocol, the Company asserts that

the Commission should revise Order No. 36207 to exclude both the costs and benefits of Chehalis from Idaho customers' rates.

The Company contends that the Commission misinterpreted the 2020 Protocol and "imagine[d]" that the WCCA required the reacquisition of Chehalis under a Washington State Portfolio Standard. Pet. for Recon. at 7. The Company interprets the term Portfolio Standard under the 2020 Protocol as a law or regulation that requires the Company to purchase certain types of Company-owned generating units, plants, mines, long-term Wholesale Contracts, Short-Term Purchases and Sales, Non-firm Purchases and Sales, or QF contracts. According to the Company, the WCCA does not contemplate acquisition of *Resources* as defined in the 2020 Protocol.

The Company also faults Order No. 36207 for indicating that the Company could not operate Chehalis to serve customers outside Washington without purchasing WCCA allowances. The Company asserts that it would not have to immediately cease generating power at Chehalis without first obtaining allowances, rather the WCCA provides for imposition of penalty allowances ranging from $10,000 to $50,000 a day. Thus, according to the Company, it did not re-acquire Chehalis under a Portfolio Standard by obtaining WCCA allowances.

Similarly, the Company argues that the WCCA is not a State-Specific Initiative. Despite acknowledging that CETA is such an initiative, the Company contends that the WCCA must be examined independently of other State-Specific Initiatives. The Company asserts that such an examination reveals that the costs and benefits of the WCCA do not fall within the definition of a State-Specific Initiative under the 2020 Protocol. Even if the WCCA is a State-Specific Initiative, the Company contends that the 2020 Protocol would not permit the costs of Chehalis to be allocated differently than its benefits as contemplated in Order No. 36207.

The Company also contends that Order No. 36207 violates the Commerce Clause of the U.S. Constitution by effectively discriminating against out-of-state economic interest. Specifically, the Company argues that WCCA costs are akin to inter-regional taxes or transfer costs like those arising from the California Cap and Trade program or the Western Energy Imbalance Market. By denying recovery of costs like those the Company can recover in rates, Order No. 36207 treats power transmitted from Washington State differently than power produced in other states. This disparate treatment provides Idaho customers with an advantage, or benefit, that burdens the Company's interstate provision of electricity.

Alternatively, if the Commission does not designate Chehalis as a System Resource under the 2020 Protocol so that Idaho customers pay a share of WCCA compliance costs, the Company requests that Idaho customers relinquish the benefits of generation from Chehalis. The Company asserts that this is "reasonable and consistent with governing law" if Idaho customers wish to avoid compliance costs for Chehalis. *Id*. at 17. However, the Company does not favor this outcome, alleging that doing so would increase the Net Power Cost forecast by approximately $23.6 million.

COMMISSION FINDINGS AND DECISION

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by reviewing the existing record, by written briefs, or by evidentiary hearing. IDAPA 31.01.01.311.03. Once a petition is filed, the Commission must issue an order saying whether it will reconsider the parts of the order at issue and, if reconsideration is granted, how the matter will be reconsidered. *Idaho Code* § 61-626(2).

Consistent with the purpose of reconsideration, the Commission's Rules of Procedure require that petitions for reconsideration "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." Rule 331.01, IDAPA 31.01.01.331.01. Rule 331 further requires that the petitioner provide a "statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." *Id.* A petition must state whether reconsideration should be conducted by "evidentiary hearing, written briefs, comments, or interrogatories." IDAPA 31.01.01.331.03. Grounds for reconsideration or issues on reconsideration that are not supported by specific explanations may be dismissed. IDAPA 31.01.01.332.

The Company states that it 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 rehearing is granted. Pet. at 5. The Commission finds that additional consideration of the issues raised in the Petition and the record is appropriate. We further find it appropriate to reconsider our findings in Order No. 36207 based on the issues raised by the Petition. We find that reconsidering Order No. 36207 by written comments, associated documents, affidavits in support

of the comments, and interrogatories is reasonable. *Idaho Code* § 61-626(2) ("If reconsideration be granted, said order shall specify how the matter will be reconsidered . . . . The matter must be reheard, or written briefs, comments or interrogatories must be filed, within thirteen (13) weeks after the date for filing petitions for reconsideration.").

The Company shall have until July 26, 2024, to file written responses to the following questions:

1. How did the Company calculate the $23.6 million increase in Net Power Cost ("NPC") was determined and whether this increase is for the system or for Idaho? The Company should provide all workpapers (with formula intact) documenting the method of calculation, the inputs and the sources of each input, and any assumptions made.

2. How the Company proposes to remove both the costs and benefits of Chehalis's generation from Idaho NPC (the mechanism and the method with workpapers), "if the Commission will not reconsider the determination regarding situs assignment of WCCA compliance costs"? Petition at 17.

3. What is the reason that the actual NPC per Megawatt hour for Chehalis generation included in the ECAM was significantly higher than other Combined Cycle Combustion Turbine natural gas plants of approximately the same size such as Current Creek and Lake Side I and Lakeside II?

4. Did the actual cost of Chehalis in the ECAM include the cost of Washington CCA allowance costs or other adders? If so, what was the cost of the allowances on a dollar per MWh basis?

5. What is the yearly projected range of allowance cost on a dollar per MWh basis and in total for both the system and for Idaho over the remaining life of the plant and what is the basis used to determine the estimates?

6. What dispatch cost is the Company currently using to dispatch Chehalis and what is it based on; does it include the cost of allowances?

7. How does the dispatch cost of Chehalis with and without WCCA compliance costs compare with the Company's other dispatchable resources?

8. If other jurisdictions are charged CCA compliance costs and Washington receives free allowances, what dispatch cost would the Company use to dispatch the plant and how would it be determined?

Staff and current Intervenors in this case shall have until September 6, 2024, to file comments on the Company's Petition. To prepare these comments, Staff and the current

Intervenors may propound such additional written interrogatories or production requests upon the Company as are necessary to develop their respective positions on the Company's Petition.

The Company shall have until September 20, 2024, to reply to Staff's and the Intervenors' comments. The parties, including the Company, may file any associated documents and affidavits in support of their comments. The parties may include additional, relevant evidence within their comments concerning the issues raised in the Petition. After the reply comment deadline has closed, and the record on reconsideration is fully submitted, we will issue a final order on the merits of the Petition within the time required by *Idaho Code* § 61-626(2).

ORDER

IT IS HEREBY ORDERED that the Company's Petition to Reconsider is granted. Staff and current intervenors in this case have until September 6, 2024, to file written comments, associated documents, affidavits, and relevant evidence if necessary. The Company has until September 20, 2024, to file any reply, associated documents, affidavits, or other relevant evidence.

IT IS FURTHER ORDERED that the Company has until July 26, 2024, to respond to the questions listed above.

THIS IS AN INTERLOCUTORY ORDER. The Commission has not finally decided all of the matters presented in this case because it has granted reconsideration.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19th day of July 2024.

ERIC ANDERSON, PRESIDENT

JOHN R. HAMMOND JR., COMMISSIONER

EDWARD LODGE, COMMISSIONER

ATTEST:

Monica Barrios-Sanchez
Commission Secretary
I:\Legal\ELECTRIC\PAC-E-24-05_ECAM\orders\PACE2405_Recon_at.docx