Office of the Secretary
Service Date
October 18, 2024

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. 36367

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"). If the adjustment were approved as filed, the monthly bill of an average residential customer using 783 kilowatt-hours of electricity would increase by about $7.39. The Company requested its proposed adjustment be processed by Modified Procedure and become effective on June 1, 2024.

On May 31, 2024, the Commission issued a Final Order that disallowed recovery of costs incurred to comply with the Washington Climate Commitment Act ("WCCA") and authorized a revised ECAM deferral amount of $60,093,960. Order No. 36207.

On June 21, 2024, the Company filed a Petition for Reconsideration ("Petition") of Order No. 36207. The Company argued the Commission erred by (1) misinterpreting the 2020 PacifiCorp Inter-Jurisidictional Protocol ("2020 Protocol") in various ways; (2) impermissibly separating the costs and benefits of its natural gas-fired generating facility in Chehalis, Washington ("Chehalis"); and (3) discriminating against the Company for engaging in interstate commerce. Alternatively, the Company asserted that the Commission should revise Order No. 36207 to exclude both the costs and benefits of Chehalis from Idaho customers' rates—effectively removing Chehalis from service of Idaho customers.

On July 19, 2024, the Commission granted the Company's Petition, setting comment deadlines, authorizing the parties to submit additional evidence, and posing some initial questions for the Company to answer. Order No. 36247. The Company responded to the questions the Commission posed, and then Commission Staff ("Staff") filed comments to which the Company replied with argument and additional evidence.

Having reviewed the record in its entirety and additional arguments lodged by the Parties on reconsideration, we now issue this Order denying the Company's Petition.

ORDER NO. 36207

As stated, Order No. 36207 authorized the Company to recover only $60,093,960 of the approximately $62.4 million in ECAM deferred costs sought in its Application. The only expense for which the Commission disallowed recovery was costs the Company incurred to comply with the WCCA. As relevant to this disallowance, Order No. 36207 provides:

> We conclude that allowing recovery of costs incurred to comply with the WCCA from Idaho customers would violate the 2020 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 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. The costs of resource procurement standards like this are situs-assigned under the 2020 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 cited other aspects of the WCCA that support this conclusion. Specifically, Order No. 36207 noted that the cost of WCCA allowances is determined in an auction, not by the Washington state legislature as with other taxes. Moreover, despite acknowledging that isolated WCCA provisions resemble a tax or generation-dispatch costs, the Commission reasoned that the provision of no-cost allowances to the Company only for customers served in Washington state distinguished the WCCA from a tax.

Order No. 36207 also examined the link between the WCCA and another Washington state climate initiative—the Clean Energy Transformation Act ("CETA"). Washington state officials have indicated in federal court proceedings that no-cost allowances are provided under the WCCA

to ensure that Washington customers do not bear the costs associated with transitioning to non-greenhouse gas emitting generation under both the WCCA and CETA. Order No. 36207 reasoned that the portfolio standards established under CETA and provision of no-cost allowances under WCCA constituted a state-specific initiative for which Idaho customers should not bear the cost. The Commission noted that costs for such state-specific policies should be allocated to customers served in the state creating the policies.

STAFF COMMENTS ON RECONSIDERATION

Staff urged the Commission to reject the Company's request to reconsider the disallowance of WCCA compliance costs associated with Chehalis. According to Staff, the Commission did not err by concluding that these costs result from a Portfolio Standard, making them properly situs assigned to Washington under the 2020 Protocol. Furthermore, Staff argued that, even if the WCCA is not a Portfolio Standard, the Commission should not authorize recovery of costs to comply with it because doing so would not be fair, just, and reasonable. Consequently, Staff recommended that the Commission neither allow the Company to recover WCCA compliance costs, nor remove the benefits of generation from Chehalis from Idaho rates.

1. The WCCA is a Portfolio Standard.

Staff argued that the Commission properly concluded that the WCCA is a Portfolio Standard under the 2020 Protocol. In support of this argument, Staff noted that the 2020 Protocol defines a "Portfolio Standard" as, among other things, "a law or regulation that requires [the Company] to acquire . . . Resources in a prescribed manner." 2020 Protocol Section 3.1.2.1. Staff characterized the Company's reading of Order No. 36207 as implying that WCCA allowances are discrete "Resources" under the 2020 Protocol.

However, Staff believed it more reasonable to interpret Order No. 36207 as the Commission concluding that the WCCA deprived the Company of the right to lawfully operate Chehalis to generate electricity without obtaining and retiring allowances as required by the WCCA. That is, Staff interpreted Order No. 36207 as expressing a Commission determination that the WCCA effectively rendered Chehalis inoperable as an electric generation facility unless the Company obtained allowances. Consequently, Staff reasoned that the Commission's conclusion that the WCCA was a Portfolio Standard under the 2020 Protocol was not error.

2. Including WCCA compliance costs in Idaho rates is not fair, just, and reasonable.

Staff further argued that allowing the Company to recover WCCA compliance costs violates two principles underpinning the 2020 Protocol. According to Staff, the 2020 Protocol contemplates the fair allocation of costs between the states the Company serves while minimizing the rate effects of state-specific policies, like the WCCA. Because allowing recovery of WCCA compliance cost violates both these principles, Staff contended that allowing such recovery would not be fair, just, and reasonable. Consequently, Staff asserted that the Commission should disallow recovery of such costs, even if the WCCA is not a Portfolio Standard under the 2020 Protocol. In support of this argument, Staff noted that the 2020 Protocol does not limit the Commission's authority to determine whether rates are fair, just, and reasonable or to consider changes in laws, regulations, or circumstances on inter-jurisdictional allocation policies when evaluating rates.

Although inclusion of certain out-of-state generation taxes in Idaho rates has been deemed fair, just, and reasonable, Staff distinguished such taxes from WCCA compliance costs. Staff cited the Wyoming Wind Tax as an example of such a tax included in Idaho rates. The Wyoming Wind Tax is a flat tax imposed on *all* wind energy generated in Wyoming, including that consumed in Wyoming. *See Wyo. Stat. Ann.* § 39-22-104. The WCCA, however, provides no-cost allowances for generation serving Washington ratepayers *only*, essentially exempting Washington residents from WCCA compliance costs. RCW §§ 70A.65.110, 70A.65.120, 70A.65.130. Consequently, Staff asserted that the Commission should disallow recovery of WCCA compliance costs under Section 1 of the 2020 Protocol, even if other provisions of the 2020 Protocol would require allocation of such costs to Idaho.

Staff also contrasted WCCA compliance costs with the treatment of rates for Public Utility Regulatory Policies Act ("PURPA") Qualifying Facilities ("QF") under the 2020 Protocol. If the price of a QF exceeds reasonable energy prices, the 2020 Protocol requires that any amount exceeding the reasonable energy price be situs assigned to the state authorizing the QF contract. 2020 Protocol Section 4.4.2.1. Staff reasoned that overpriced QF rates are, as a practical matter, like WCCA compliance costs because the Washington legislature artificially inflated the price of exported energy generated at Chehalis by requiring the Company to first purchase allowances for exported generation. Accordingly, Staff argued that the WCCA should receive similar treatment to QF rates under the 2020 Protocol.

3. **Disallowing recovery of WCCA compliance costs does not violate the Dormant Commerce Clause.**

Staff also challenged the Company's assertion that disallowing recovery of WCCA compliance costs impermissibly discriminates against the Company as an interstate utility in violation of the Dormant Commerce Clause. In this vein, Staff again noted that Washington state provides the Company with no-cost allowances to cover electricity generated by Chehalis distributed to Washington customers. Washington state does this to insulate its residents from the cost for complying with both the CETA and the WCCA which the Company would pass on. However, Staff asserted that on its face the disparity between the $42 million of WCCA compliance costs the Company incurred in 2023 and the $336,219 of CETA compliance costs the Company incurred the same year suggested that Washington state's choice to offer no-cost allowances favored its own residents instead of equalizing compliance costs. Accordingly, Staff argued that any Dormant Commerce Clause violation associated with WCCA compliance costs occurred when the Company initially incurred the costs.

4. **The impact of removing Chehalis from Idaho rates.**

Staff also challenged the Company's calculation of the impact to Idaho ratepayers if Chehalis' generation is removed from Idaho rates. According to the Company, removing Chehalis from Idaho rates would increase Idaho's Net Power Cost ("NPC") by $23.6 million. However, Staff took exception with the Company's inclusion of the capacity deficiency penalty from the Western Resource Adequacy Program ("WRAP") to calculate replacement capacity. According to Staff, the Company would not actually be capacity deficient if Chehalis were removed from Idaho rates. Rather, Staff argued the Company would be reallocating existing generation to Idaho ratepayer's detriment. Consequently, Staff reasoned that incurring the capacity deficiency penalty would be unreasonable. Without including the capacity penalty, the capacity costs of removing Chehalis drops from $119 million on a system basis to $46 million on an Idaho basis.

Staff also disagreed with the Company's use of the hourly Mid-Columbia ("Mid-C") prices to replace the energy supplied by Chehalis. Instead, Staff proposed using the monthly average cost per megawatt-hour of gas generation on the Company's system because WRAP replacement costs are based on a replacement gas plant. Staff asserted that this would reduce the costs of replacing Chehalis by $99 million on a system basis.

Alternatively, if the Commission deems the cost of gas generation improper, Staff proposed using the Company's eastern Balancing Area Authority ("BAA") Locational Marginal Price ("LMP") from the Energy Imbalance Market ("EIM") (or the Energy Day Ahead Market when that becomes available). Staff believed this rate to be more appropriate than Mid-C market prices, as the Company would purchase replacement power from the LMP. If LMP prices are used instead of Mid-C, that would reduce the Company's estimated cost for replacing Chehalis by about $67 million on a system basis. Using LMP prices reduces the replacement energy cost from $190 million to $123 million on a system basis.

Staff also disagreed with the Company's use of rate base and expenses from 2020 when calculating the cost of removing Chehalis from Idaho rates. Staff noted that the Company has a general rate case pending before the Commission (Case No. PAC-E-24-04) in which it has provided updated fuel costs from 2023. Using the updated 2023 fuel costs would increase the cost of removing Chehalis by about $242,000.[1]

According to Staff's calculations, the total cost of removing Chehalis from Idaho rates would be $4.3 million if monthly average gas cost is used or $2.6 million using the LMP price from the EIM. Staff suggested that removing Chehalis entirely from Idaho rates could cost as little as $2.6 million further demonstrated that including $2.4 million in WCCA compliance costs in Idaho rates is not fair, just, and reasonable.

COMPANY REPLY COMMENTS ON RECONSIDERATION

The Company challenged Staff's interpretation of the WCCA as effectively depriving the Company of the right to lawfully operate Chehalis. According to the Company, the text of the WCCA and its associated regulations do not support this interpretation. In this vein, the Company noted that the WCCA is generally enforced with financial penalties—not injunctions that would stop facilities from generating power. Additionally, the Company argued that interpreting the WCCA as having deprived it of a property right in Chehalis could have unforeseen consequences on future proceedings.

Similarly, the Company challenged Staff's assertion that the WCCA is a Portfolio Standard under the 2020 Protocol. Specifically, the Company stated that the WCCA is not a

[1] Staff further noted that the Company omitted capacity costs for three months and miscalculated capacity costs for another month.

Portfolio Standard because it does not *require* the Company to procure a Resource, much less procure it in a prescribed manner. Rather, the Company viewed the WCCA as discouraging the construction of new greenhouse gas emitting generation facilities.

The Company further argued that conferring the benefits of Chehalis to Idaho customers without paying for its full prudent costs is not fair, just, and reasonable. According to the Company, disallowing the recovery of prudent expenses (like WCCA compliance costs) without removing the benefits conflicts with the 2020 Protocol and pre-existing fundamental ratemaking principles.

The Company also disputed Staff's analysis of the impact of removing Chehalis from Idaho rates. First, the Company asserted that removing Chehalis would increase Idaho NPC by $7.9 million. After challenging various aspects of Staff's analysis, the Company asserted that its calculations should be used to determine the cost of removing Chehalis from Idaho rates.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over the Company's Application and the issues in this case under Title 61 of the Idaho Code including, *Idaho Code* §§ 61-501, -502, and -503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of all public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provisions of law, and to fix the same by order. *Idaho Code* §§ 61-501, -502, and -503.

Under *Idaho Code* § 61-626, the Commission may abrogate or change one of its orders that it determines after reconsideration is unjust, unwarranted, or should be changed. This permits the Commission to correct any errors in the original order before appellate review. *See Washington Water Power Co. v. Kootenai Env't All.*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). A petition for reconsideration must state why the order to be reconsidered, or any issued decided therein, is unreasonable, unlawful, erroneous, or not in conformity with the law. IDAPA 31.91.01.331.01. After reviewing the entire record in this case, including the comments, additional materials that were filed, and arguments provided by the parties on reconsideration, we sustain our prior decision disallowing recovery of WCCA compliance costs for the reasons set forth below.

1. WCCA compliance costs are properly allocated to Washington State under the 2020 Protocol

The 2020 Protocol is a method of allocating components of the Company's service between the jurisdictions in which it operates for use in the Company's rate setting proceedings. The 2020

Protocol was developed by commission staff members, regulatory agencies, and other interested groups from states in which the Company operates for use on an interim basis while a long-term allocation and assignment method was developed. The Commission initially approved the 2020 Protocol in Order No. 34640, and subsequently extended its approval through December 31, 2025, in Order No. 35984.

The 2020 Protocol allocates the costs and benefits of a Company-owned generating facility, like Chehalis, by first assigning the facility to one of two categories: "State Resources" or "System Resources." 2020 Protocol, Section 3.1.2. Under the 2020 Protocol, State Resources consist of only "Demand-Side Management Programs," "Portfolio Standards," and "State-Specific Initiatives." The 2020 Protocol allocates the costs associated with a Portfolio Standard that exceed those the Company otherwise would have incurred to the jurisdiction that adopted the Portfolio Standard. 2020 Protocol, Section 3.1.2.1. Stated differently, the 2020 Protocol requires a state to bear the additional costs resulting from a Portfolio Standard. However, the 2020 Protocol does not contain a specific provision expressly allocating the *benefits* of a Portfolio Standard.

In Order No. 36207, we concluded that the WCCA, at least as applied to electric utilities, is akin to a Portfolio Standard and, therefore, the cost to comply with it should be allocated to Washington state. Understanding why this is so, requires an understanding of both the structure of the WCCA and its peculiar application to electric utilities. The WCCA aims to reduce greenhouse gas emissions by instituting a "cap and invest program." RCW § 70A.65.005, .010(58), .060–.080. The WCCA empowers the Washington Department of Ecology ("WDE") to cap emissions of certain greenhouse gases by large emitters—called "covered entities." RCW § 70A.65.080(1). The Company qualifies as a covered entity because of the greenhouse gas emissions from Chehalis.

Covered entities must obtain and retire allowances for every metric ton of carbon dioxide gas equivalent they emit under the WCCA. *See* RCW § 70A.65.010(1) (defining an "Allowance" as authorization to emit up to one metric ton of carbon dioxide equivalent). Failure to do so can result in the imposition of "penalty allowances" or monetary sanctions ranging from $10,000 to $50,000 per day, depending on the violation. *See* RCW 70A.65.200(2)–(5); Washington Administrative Code ("WAC") 173.446-610(2)–(6). Generally, covered entities obtain allowances through auctions the WDE conducts. *See* RCW § 70A.65.100. The WDE then uses the funds raised in the auctions on climate change and environmental justice projects offered exclusively in Washington state. RCW § 70A.65.100(7), .230. However, electric utilities subject to CETA (like

the Company) receive some allowances for free. RCW § 70A.65.110–130. Essentially, the WCCA and WDE regulations provide electric utilities with free allowances to cover the forecasted emissions associated with servicing customers in Washington State. WAC 173-446-230. The purpose of these no-cost allowances is to protect customers in Washington from paying the incremental costs associated with transitioning to non-greenhouse gas emitting generation resulting from both CETA and the WCCA. *See* RCW § 70A.65.120(1). The Washington state legislature chose to provide no-cost allowances for Washington customers only. In sum, the WCCA requires the Company to obtain and retire allowances to operate Chehalis to generate electricity. Some of these allowances the Company must pay for while it receives others—specifically those applied to generation to serve customers in Washington state—for free.

The next issue we must address is how the above-described statutory scheme interacts with the 2020 Protocol. Staff contends that the WCCA constitutes a Portfolio Standard under the 2020 Protocol, the costs of which are properly allocated to Washington state. As stated, the 2020 Protocol allocates the costs of a Portfolio Standard that exceed the costs the Company otherwise incurred to the jurisdiction that adopted the Portfolio Standard. 2020 Protocol, Section 3.1.2.1. The 2020 Protocol defines a Portfolio Standard as "a law or regulation that requires [the Company] 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." 2020 Protocol, Appendix A at 6 (defining "Portfolio Standard"). Although Chehalis is a "Resource" under the 2020 Protocol, the greenhouse gas allowances the Company had to obtain to operate Chehalis are not. *See* 2020 Protocol, Appendix A at 7 (defining the term "Resource" to mean "a Company-owned generating unit, plan, mine, long-term Wholesale Contract, Short-Term Purchase and Sale, Non-firm Purchase and Sale, or QF contract."). Consequently, to determine whether the WCCA constitutes a Portfolio Standard, we must consider its effects on the Company's relationship with Chehalis.

It is undisputed that the Company owned Chehalis prior to enactment of the WCCA. It is also undisputed that the WCCA did not deprive the Company of legal title to Chehalis. However, as described above, the Company could not operate Chehalis without obtaining allowances via purchase at auction, provision of free allowances, involuntary imposition of penalty allowances, or some other means. In other words, the WCCA prescribes processes the Company must follow to operate Chehalis to produce electricity (*e.g.*, obtaining and retiring allowances).

The remaining question we must address is whether the WCCA required the Company to "acquire" Chehalis by obtaining greenhouse gas allowances. The Company contends it does not because (1) the Company owned Chehalis before the WCCA went into effect; and (2) the WCCA does not mandate the acquisition of any Resource. We disagree. The Company does not *acquire* a Resource within the context of a Portfolio Standard only by obtaining ownership of it. Indeed, contracts for the purchase and sale of power, which are not tangible property subject to ownership, are Resources under the 2020 Protocol. *Id.* Considering this, we conclude that the Company has not acquired a Resource under the 2020 Protocol if it does not have the right to lawfully employ the Resource to provide electrical service to customers without complying with the WCCA.

Accordingly, we affirm our conclusion from Order No. 36207 that the Company lost the right to lawfully operate Chehalis to generate electricity without obtaining allowances when the WCCA became effective. The Company reacquired this right by obtaining WCCA allowances as prescribed by the Washington state legislature. Consequently, the costs the Company incurred to comply with the WCCA that exceed the cost the Company otherwise would have incurred (*e.g.*, the cost of purchasing allowances) are appropriately assigned to customers in Washington state.

2. **Allowing the recovery of WCCA compliance costs in Idaho rates would not be fair, just, and reasonable.**

The 2020 Protocol was designed to provide an allocation method that would result in the setting of fair, just, and reasonable rates for the Company's electric service based on a variety of scenarios. The 2020 Protocol specifically considered the treatment in rates of state-specific policies and portfolio standards and how those would be allocated between the states. Section 1 of the 2020 Protocol expressly provides that it is not "intended to abrogate any Commission's right or obligation to: (1) determine fair, just, and reasonable rates based upon applicable laws and the record established in rate proceedings conducted by the Commission;" or "(2) consider the effect of changes in laws, regulations, or circumstances on inter-jurisdictional allocation policies and procedures when determining fair, just, and reasonable rates. . . ." 2020 Protocol, Section 1 at 3. For the reasons set forth below, even if the 2020 Protocol would otherwise result in the recovery of WCCA compliance costs through Idaho rates, we decline to authorize such recovery because doing so would not be fair, just, and reasonable.

The Company contends that allowing Idaho customers the benefit of Chehalis' generation without paying a share of WCCA compliance costs conflicts with the ratemaking principle of cost

causation. This principle generally holds the customer responsible for the costs associated with providing the Company's service. However, even in the 2020 Protocol the principle of cost causation has not been applied in the rigid manner the Company urges. For example, the treatment of rates for PURPA QFs under the 2020 Protocol shows that the principle of cost causation does not compel allocation of single state's artificial inflation of energy prices to all the Company's customers on a system basis.

Under the 2020 Protocol, costs of a QF power purchase agreement ("PPA") executed after December 31, 2019, which are above the forecasted reasonable energy price are allocated to the state that approved the PPA (situs assigned to the state where the QF is located). 2020 Protocol Section 4.4.2.1. If a state happens to have inflated QF rates for whatever reason, customers in the state where that QF is located pay for the inflated costs of complying with the rates authorized by the state commission for QFs in that state. This ensures states that do not offer high rates for QFs are not required to pay for another state's inflated QF rates. QF and WCCA compliance costs are similar in both formation and effect. Both arise from a single state's unilateral decision, and both artificially inflate costs to generate or supply electricity. Accordingly, it follows that, like overpriced QF rates, the amount the WCCA increased the costs the Company otherwise would have incurred should be allocated to the jurisdiction that caused the increase (*i.e.*, Washington).

Furthermore, allowing the Company to recover WCCA compliance costs from Idaho customers would conflict with one of our primary functions: preventing rate discrimination. Although not directly applicable in this case, *Idaho Code* § 61-315 prohibits public utilities in Idaho from charging discriminatory rates or maintaining unreasonable rate disparities. Allowing the Company to recover WCCA compliance costs would, in practical effect, result in the creation of discriminatory customer classes, consisting of the Company's Idaho customers who would have to pay for greenhouse gas allowances and the Company's Washington customers who would not.

In sum, requiring Idaho ratepayers to bear the cost of a unilateral Washington policy decision that is not equally applied to its own residents is not fair, just, and reasonable which is in direct conflict with *Idaho Code* § 61-502. Similar discriminatory cost increases authorized by another state would not be recoverable for Idaho customers under the 2020 Protocol. Accordingly, even the WCCA were not a Portfolio Standard under the 2020 Protocol, we would not allow recovery of such costs in Idaho rates because doing so is not just and reasonable. *See Idaho Code* § 61-301 (requiring all rates charged by public utilities to be just and reasonable).

3. **Disallowing the recovery of WCCA compliance costs in Idaho rates does not violate the Dormant Commerce Clause.**

The Company argues that disallowing recovery of WCCA compliance costs violates the Dormant Commerce Clause of the United States Constitution. Article I, Section 8, clause 3 of the United States Constitution grants Congress authority "[t]o regulate commerce ... among the several states...." The clause also has a negative, or "dormant," aspect, implicitly preempting state interference with interstate commerce. *United Haulers, Ass'n, v. Oneida–Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007).

The Dormant Commerce Clause protects markets and market participants. *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 300 (1997). Thus, the Dormant Commerce Clause is inapplicable in the absence of (1) actual or prospective competition between entities in an identifiable market; and (2) state action expressly discriminating against or unduly burdening interstate commerce. *Id.* Additionally, this impact cannot be merely incidental. *United States v. Lopez*, 514 U.S. 549, 559 (1995).

The Company contends that disallowing recovery of WCCA compliance costs violates the Dormant Commerce Clause because doing so has the practical effect of discriminating against it for engaging in interstate operations. This misstates the focus of the Dormant Commerce Clause analysis. As indicated above, a Dormant Commerce Clause violation arises from state action discriminating against interstate commerce. *Id.* Thus, it is critical to differentiate between state actions that *discriminate or burden* interstate commerce and those that *distribute* the effects of discrimination or burdens imposed by another state.

The Company asserts that, if we do not permit it to pass on to Idaho customers costs that were already imposed by Washington state, we would be effectively discriminating against interstate commerce. We disagree. Any decision we make regarding the recovery of WCCA compliance costs in Idaho rates will not impose a new burden on the Company. Regardless of whether we allow the Company to pass the costs of greenhouse gas allowances for its Chehalis emissions to Idaho customers, the Company will remain the entity required to obtain allowances under the WCCA. The only thing that will change is the identity of the party to the interstate transaction bearing the ultimate financial burden. However, any decision we make allocating that cost will not burden interstate commerce anymore than it already is. Additionally, the WCCA facially discriminates against out-of-state interests by providing no-cost allowances to the

Company for greenhouse gas emissions generated to serve Washington customers without providing the same no-cost allowances for emissions associated with serving the retail load of the Company's other jurisdictions. Allowing the Company to pass the WCCA compliance costs it incurred to Idaho customers would not eliminate this discrimination against interstate commerce. It would merely shift the effects of the discrimination from the Company to Idaho customers. Consequently, the Company's argument that disallowing recovery of WCCA compliance costs violates the Dormant Commerce Clause fails.

4. Removing the benefits of Chehalis from Idaho rates would not be fair, just, and reasonable.

The Company argues, in the alternative, that the Commission should remove the generation benefits of Chehalis from the deferral balance if recovery of the WCCA costs for operating the facility are disallowed. Based on our conclusion that the WCCA compliance costs the Company incurred are properly allocated to Washington state, we further conclude that it would not be fair, just, and reasonable to remove the benefits of Chehalis' generation from Idaho rates due to the disallowance of those costs.

ORDER

IT IS HEREBY ORDERED that, for the reasons stated above, the Company's Petition for Reconsideration is DENIED.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

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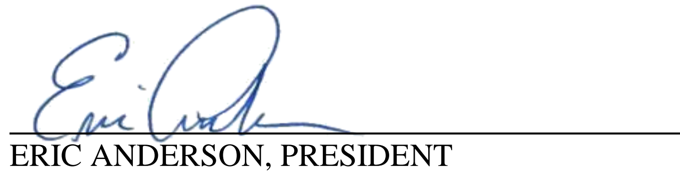
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18th day of October 2024.

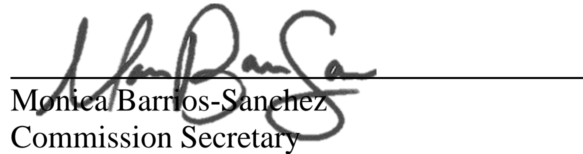


ERIC ANDERSON, PRESIDENT

JOHN R. HAMMOND JR., COMMISSIONER

EDWARD LODGE, COMMISSIONER

ATTEST:



Monica Barrios-Sanchez
Commission Secretary

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