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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of the 2024 Energy Balancing Account	Docket No. 24-035-01

ROCKY MOUNTAIN POWER'S REQUEST FOR REVIEW OR, IN THE ALTERNATIVE, REHEARING

In accordance with Utah Code Ann. §§ 63G-4-301 and 54-7-15, Rocky Mountain Power ("RMP" or "Company") hereby submits this Request for Review or, in the alternative, Rehearing, of the Utah Public Service Commission's Order in this matter, issued February 25, 2025 ("Order"), and respectfully requests the Commission either reverse its disallowance of recovery of $19,413,361 sought to compensate the Company for the costs it incurred due to compliance with the Washington Climate Commitment Act ("CCA") or order a rehearing of that issue.

I. INTRODUCTION

The Order addresses various relief the Company sought through its application in this matter, including the Company's recovery of costs associated with power generated from the Chehalis facility located in Washington State. Under the CCA, the Company must purchase greenhouse gas allowances for power generated by the Chehalis plant that is used to serve customers outside of Washington. The Order concluded that those costs should be treated as situs-assigned costs under a state-specific initiative pursuant to Section 3.1.2.1 of the 2020 Inter-Jurisdictional Cost Allocation Agreement ("2020 Protocol").[1] Specifically, the Commission determined that Washington's policy underlying the CCA is "explicitly discriminatory" and not contemplated by the 2020 Protocol to be a generally applicable generation tax because it "penalizes emissions but shields its own residents from incurring the associated costs."[2] As such, the Commission disallowed the Company's request for recovery of $19,413,361, even though the Commission's order would still permit Utah customers to benefit from the substantial cost

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[1] *In the Matter of Rocky Mountain Power's Application for Approval of the 2024 Energy Balancing Account,* Docket No. 24-035-01, Order, Feb. 25, 2025, at 24 ("Order").
[2] *Id.*

advantages of power obtained from Chehalis without paying their share of the compliance costs required to comply with Washington law.

For the reasons detailed in this Request, the Order's disallowance of CCA-related costs from recovery through the Company's energy balancing account ("EBA") is in error. The Order relies on the 2020 Protocol but does not apply the 2020 Protocol as written, reaches conclusions that are not supported by the text of the 2020 Protocol, and is discriminatory against the Company as a provider of electric service from Chehalis for which Utah customers are paying only a portion of the associated costs. In addition, there is good cause to reverse 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 CCA costs in Utah rates, the Company requests that, consistent with the 2020 Protocol, the Commission remove the Chehalis plant as a resource allocated to Utah. For these reasons, the Company respectfully requests that the Commission review the Order and reverse its decision with respect to CCA-related costs or, alternatively, grant rehearing on that issue.

II. ARGUMENT

A. The Commission Should Review and Reverse Its Interpretation and Application of the 2020 Protocol.

1. Chehalis is a "System Resource" Rather Than a "State Resource" for Purposes of the 2020 Protocol Cost Allocation and Assignment.

The 2020 Protocol provisions relevant to the Order focus on how to allocate the costs of resources that are used to provide power to customers in the six states served by the Company. For each resource ("Resource") the Company procures to provide power to its customers (whether by ownership, contract, or to comply with state rules), the costs and benefits of that

Resource must be divided up among the six states. The 2020 Protocol provides an agreed-upon methodology for that division.

Under the 2020 Protocol, Company "Resources [are] allocated to one of two categories for inter-jurisdictional allocation purposes: State Resources or System Resources."[3] The 2020 Protocol defines a "Resource" to include "a Company-owned generating unit, plant, mine, long-term Wholesale Contract, Short-Term Purchase and Sale, Non-firm Purchase and Sale, or QF contract."[4] The Chehalis plant is a "Company-owned generating unit."

For "System" resources used by Utah customers, the Commission acknowledged in its order approving the 2020 Protocol that the Protocol's cost allocation criteria require that "new resources with a commercial operation date before January 1, 2024 will continue to be treated as system resources, and assigned and allocated based on the system generation factor[.]"[5] Chehalis started commercial operations in October 2003, and the Company acquired the plant in 2008.[6] Thus, there is no dispute that Chehalis is an existing Resource that was online before 2024. The terms of the 2020 Protocol and the Commission's order approving it place Chehalis in the System Resource category for cost allocation purposes.

In addition, the 2020 Protocol provides that "[g]eneration-related dispatch costs and associated plant will be" System allocated.[7] This makes sense because, among other reasons, it is difficult to quantify and situs-assign the impact that incremental generation costs, such as taxes or environmental compliance costs, have on system plant dispatch. When the costs and benefits

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[3] *Application of RMP for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement*, Docket No. 19-035-42, Application filed Dec. 3, 2019, Ex. RMP___JRS-1, at Section 3.1.2 ("2020 Protocol").
[4] *Id.* at Appendix A.
[5] *In the Matter of the Application of Rocky Mountain Power for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement*, Docket No. 19-035-42, Order Approving 2020 Protocol, April 15, 2020, at 4.
[6] State of Washington Energy Facility Site Evaluation Council, "Chehalis Generation Facility," *available at*, https://www.efsec.wa.gov/energy-facilities/chehalis-generation-facility (last visited March 13, 2025).
[7] 2020 Protocol, Section 3.1.7.

of a Resource are being allocated, the allocation is distorted if certain costs or benefits are removed from the calculation required by the 2020 Protocol.

To be categorized as a "State Resource" under the 2020 Protocol, a 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."[8] The analysis in the Order includes references to "Portfolio Standards" and "State-Specific Initiatives,"[9] which are defined terms in the 2020 Protocol.

- "Portfolio Standard" is defined in the 2020 Protocol to mean "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."[10]
    - The "portion of costs associated with Interim Period Resources[11] acquired to comply with a State's Portfolio Standard adopted, either through legislative enactment or by a State's Commission, that exceeds the costs PacifiCorp would have otherwise incurred, will be allocated on a situs basis to the Jurisdiction adopting the Portfolio Standard."[12]

[8] *Id.* at 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.* at Section 3.1.2.
[9] Order at 24-25.
[10] 2020 Protocol, Appendix A.
[11] In the 2020 Protocol, the "Interim Period" refers to January 1, 2020, to December 31, 2023, the period during which the 2020 Protocol approved by the Commission remains in effect. *Id.* at Section 1 (RMP Exhibit 47 at 19). On April 12, 2023, the Company submitted its application requesting the Commission's approval to extend the 2020 Protocol through December 31, 2025, effective January 1, 2024. *See In the Matter of the Application of Rocky Mountain Power for Authority to Extend the 2020 Inter-Jurisdictional Cost Allocation Agreement Through December 31, 2025,* Docket No. 20000-641-EA-23 (Record No. 17280), Notice of Application (April 17, 2023). The Commission approved the Company's request to extend the 2020 Protocol at its Open Meeting on December 28, 2023.
[12] 2020 Protocol, Section 3.1.2.1.

- "State-Specific Initiatives" include "Resource[s] *acquired* in accordance with a State-specific initiative," which may include, but are not limited to, Resources *acquired* to comply with "incentive programs, net-metering tariffs, feed-in tariffs, capacity standard programs, solar subscription programs, electric vehicle programs, and the acquisition of renewable energy certificates."[13] The 2020 Protocol notes that "[h]istorically, [State-Specific Initiatives] . . . have not included local fees or taxes related to the ongoing operation of existing transmission and generation facilities within a State."[14]
    - The allocation and assignment rule for these Resources is clear: "Costs and benefits associated with Interim Period Resources *acquired* in accordance with a State-specific initiative will be allocated and assigned on a situs basis to the State adopting the initiative."[15]

The 2020 Protocol speaks to *acquisition* of the Resource whose costs and benefits are being allocated. Thus, it is only when the Company *acquires* a Resource as part of a state policy initiative that Section 3.1.2.1 and its "State Resources" category (with its attendant cost allocation and situs assignment criteria) come into play. Specifically, to qualify as a State Resource, the Company must have *acquired* the Resource *because of a state-imposed requirement* to procure specific types of resources. For example, this could include renewable generation procured by the Company to comply with a state's Portfolio Standard, capacity standard, or incentive program.

There is no evidence or even inference that Chehalis was "acquired to comply with" a Portfolio Standard or was "acquired in accordance with" a State-Specific Initiative program,

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[13] *Id*. (emphasis added).
[14] *Id.* at Section 5.8.
[15] *Id.* at Section 3.1.2.1. (emphasis added).

including the CCA. In fact, as noted above, Chehalis was acquired by the Company long before the CCA was implemented by Washington. While Chehalis is certainly impacted by Washington's state mandates, under the terms of the 2020 Protocol, adding new state-imposed costs or surcharges to the operating costs of an existing Resource does not convert that Resource into a "State Resource." The criteria for designating a Resource in the Portfolio Standard or State-Specific Initiative category focuses on "Resources acquired in accordance with" the initiative.

Because the undisputed evidence is that Chehalis was acquired long before the CCA was implemented by Washington and was not acquired to satisfy whatever Washington policies underlie the CCA, under the express terms of the 2020 Protocol, the Chehalis facility cannot be considered a Resource whose costs would be allocated as State Resource, whether under the Portfolio Standard or State-Specific Initiative provisions of the 2020 Protocol.

2. The Legal Requirement that the Company Incur CCA Costs to Enable Chehalis to Serve Utah Customers Does Not Constitute a "State-Specific Initiative" or "Portfolio Standard" Subject to Situs Assignment.

The Commission's decision that CCA costs constitute a situs-assigned State-Specific Initiative relies on the determination that the CCA "penalizes emissions but shields its own residents from incurring the associated costs."[16] The Commission did not find it had to determine whether the CCA constitutes a state portfolio standard, but did "find[] some merit to [Utah Association of Energy Users'] argument that the WA CCA 'has the functional characteristics of a portfolio standard.'"[17]

[16] Order at 24.
[17] *Id*. at 25.

There is a critical difference between a State-Specific Initiative or Portfolio Standard that would result in situs-assignment of a Resource, on the one hand, and the Chehalis compliance costs mandated by the CCA, on the other hand. The difference is illustrated by contrasting the Washington state mandates that impact the operating costs and dispatch of Chehalis: the CCA and the Washington Clean Energy Transformation Act ("CETA").[18]

The Company agrees that CETA is a State-Specific Initiative under the 2020 Protocol, as it satisfies the definition of a State-Specific Initiative. CETA demands that the Company *procure* particular types of resources to provide power for Washington customers, with all incremental costs of CETA compliance appropriately situs assigned to Washington. This would include any costs "that exceed the costs PacifiCorp would have otherwise incurred"[19] (*i.e.*, all incremental costs associated with Resources *acquired* to comply with CETA are situs assigned to Washington). For example, if PacifiCorp had to procure a resource to specifically meet the needs of CETA, the costs and benefits of that resource would be situs assigned.

In this way, the costs of CETA are fully allocated and situs assigned to Washington. Customers in Utah and other states are not required to pay for the Company's incremental costs to comply with CETA. The provisions that make no-cost allowances available to the utilities, including the Company, are included in the CCA statute, and the Washington Department of Ecology has not permitted those no-cost allowances to be allocated to non-Washington customers.[20] The Company's obligations under the CCA regime that are being applied in this case

[18] RCW Chapter 19.405, §§ 19.405.010 – 19.405.901 (2023).
[19] 2020 Protocol, Section 3.1.2.1 (describing a "Portfolio Standard").
[20] Although the Company proposed that no-cost allowances should also be extended to the Company's customers in other states, the Washington Department of Ecology rejected the proposal and concluded that the CCA statute required that these no-cost allowances offset the cost burden of CETA compliance for Washington customers. 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 Mar. 13, 2025).

are a cost that is directly applied to power generation at a facility that is located in Washington, and none of those CCA obligations involve resource acquisition akin to a Portfolio Standard like CETA.

The CCA 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.[21] Compliance is demonstrated by retiring allowances for any GHG output from Chehalis within the State of Washington.[22] For energy from Chehalis allocated to serve customers outside Washington, the CCA imposes an obligation to obtain allowances proportionate to the cost-allocated share of Chehalis.[23]

The CCA requirements do not involve resource procurement standards, but rather are functionally equivalent to the California cap-and-trade program, the Wyoming wind tax, and other state programs and taxes that increase dispatch costs—none of which are treated by the Commission as State-Specific Initiatives for cost allocation purposes.[24] Ultimately, the requirements applicable to Chehalis are driven by the levels of GHG emissions the CCA aims to reduce within and beyond the electric industry; they are separate from the generation portfolio standards that drive CETA.

3. The Order Impermissibly Disconnects Allocation of Chehalis "Costs and Benefits."

Assuming for argument's sake that Chehalis qualified for treatment as a situs-assigned State-Specific Initiative Resource, Section 3.1.2.1 of the 2020 Protocol requires that both the "*costs*

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[21] Response Testimony of Michael G. Wilding at 25:491-493 ("[T]here is no compliance obligation if there is no generation, and the amount of the compliance obligation is determined by the amount of generation.") ("Wilding Response"). *See also* RCW 70A.65.010(1) (defining "Allowance" as "an authorization to emit up to one metric ton of carbon dioxide equivalent.").
[22] Wilding Response at 22.
[23] *Id.* (summarizing incremental dollar-per-megawatt-hour for generation from Chehalis).
[24] Tr. Vol. I, p. 147, ll. 13-20; 2020 Protocol, Section 3.1.7.

and benefits" resulting from a State-Specific Initiative be "assigned on a situs basis to the State adopting the initiative."[25] For a Portfolio Standard Resource, Section 3.1.2.1 provides that "[t]he portion of costs associated with Interim Period Resources acquired to comply with a State's Portfolio Standard . . . that exceed the costs PacifiCorp would have otherwise incurred, will be allocated on a situs basis to the Jurisdiction adopting the Portfolio Standard."[26] The Portfolio Standard language provides a specific limit bounded by the "portion of costs" associated with a Portfolio Standard, but maintains the link between situs assignment of costs and benefits. Consistent with basic ratemaking principles, the 2020 Protocol provisions designating State Resources do not permit the assignment of costs to be disconnected from the assignment of benefits.

The record identifies the costs the Company incurs to comply with CCA requirements, which includes "'an incremental $/MWh cost based on the GHG allowance price for the test period'" for any energy exported from Chehalis to Utah.[27] The substantial benefits of Chehalis power to Utah customers are also documented in the record. Energy purchased from Chehalis is a less expensive option than sourcing replacement energy from other market purchases, "'which are more expensive than the cost of fuel and GHG allowances combined.'"[28] Therefore, even accounting for the CCA compliance costs, generation from Chehalis results in substantial net benefits for Utah customers.

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.[29] The Order does not comply

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[25] 2020 Protocol, Section 3.1.2.1 (emphasis supplied).
[26] *Id*.
[27] Wilding Response at 22:443-446.
[28] *Id.* at 23:456-460.
[29] 2020 Protocol, Section 3.1.2.1.

with this requirement nor with the Commission's order approving the 2020 Protocol. Rather, the Order situs assigns the CCA costs required to provide power to Utah customers entirely to Washington but maintains the benefits Utah customers receive from their share of the power generated at Chehalis.

This approach is inconsistent with fundamental ratemaking standards. In ratemaking, utilities and regulators strive to allocate costs according to the long-standing and generally accepted principle of cost-causation. The cost-causation principle compares "the costs assessed against a party to the . . . benefits drawn by that party."[30] When the 2020 Protocol situs assigns a Resource, it is assigning the "[c]osts and benefits associated with Interim Period Resources acquired in accordance with a State-Specific Initiative[.]"[31] The 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.

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 acquired in accordance with programs 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.

The Order contravenes the 2020 Protocol by enabling Utah customers to continue to benefit from Chehalis generation while disallowing costs required to provide it to them. This outcome is

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[30] *S.C. Pub. Serv. Auth. v. Fed. Energy Regul. Comm'n*, 762 F.3d 41, 87-88 (D.C. Cir. 2014); *see also* Jonathan A. Lesser, Ph.D. & Leonardo R. Giacchino, Ph.D., FUNDAMENTALS OF ENERGY REGULATION at 183 (2d ed., Public Utilities Reports, Inc. 2013) ("One fundamental regulatory principle is to allocate costs to those who cause them.").
[31] 2020 Protocol, Section 3.1.2.1.

entirely at odds with the plain language of the 2020 Protocol and the cost-causation principle and should be reversed by the Commission.

4. The Order Applies the 2020 Protocol in a Manner that Discriminates Against the Company as a Utility Providing Interstate Services.

In December 2023, the Company filed a complaint in federal district court in Tacoma, Washington, asserting claims regarding the constitutionality of certain provisions of the CCA under the dormant Commerce Clause of the U.S. Constitution.[32] In August 2024, the Company filed an appeal, which is still pending, in the U.S. Court of Appeals for the Ninth Circuit.[33] Unless and until a court rules on the issues the Company has raised, it must comply with the law. The Company has also challenged the Oregon,[34] Wyoming,[35] and Idaho[36] state commission decisions that disallowed recovery of CCA costs attributable to Chehalis power used in those states.

Whatever the merits of dormant Commerce Clause challenges to the CCA, the Commission's application of the 2020 Protocol creates an outcome that itself is contrary to constitutional 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."[37]

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[32] *PacifiCorp v. Watson*, Case No. 3:23-cv-6155, Complaint (WD Wash, Dec. 15, 2023). The U.S. District Court subsequently granted defendant's motion to dismiss for failure as a matter of law. *PacifiCorp v. Watson*, No. 3:23-CV-06155-TMC, 2024 WL 3415937, at *12 (W.D. Wash. July 15, 2024).
[33] *PacifiCorp v. Watson*, Case No. 24-4803, Appellant's Opening Brief (Oct. 30, 2024); *see also* Rebuttal Testimony of Michael G. Wilding at 5:85-92.
[34] *See PacifiCorp v. Public Utility Commission of Oregon, et al.*, Oregon Court of Appeals, Case No. A183803.
[35] *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.
[36] *See PacifiCorp, d/b/a Rocky Mountain Power v. Idaho Public Utilities Commission*, Idaho Supreme Court, Case No. PAC-E-24-05.
[37] *Nat'l Pork Producers Council v. Ross*, 598 U.S. 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 U.S. 331 (1982) (overturning an order of the New Hampshire Public Utilities Commission); *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994) (invalidating a pricing order issued by the Massachusetts Department of Food and Agriculture). The 2020 Protocol is a cost allocation framework that was approved by order of the Commission, and the commissions in the other PacifiCorp states. *See* 2020 Protocol.

The Company's witnesses identified the ways in which CCA costs are similar to other inter-regional taxes and transfer costs resulting from other requirements like the Wyoming wind tax.[38] The Order denies the Company recovery of costs that are functionally the same as other state assessments that the Company is authorized to recover in its rates. The basis for the disparate treatment appears to be the Commission's determination that, due to its dissatisfaction with the way Washington's statute operates, certain interstate power transmitted from Washington will be treated differently than interstate power that the Company produces in the other states, including Utah.[39] The result of the Commission's decision is to protect Utah consumers from added costs in their rates, while leaving the Company unable to recover approximately $19.4 million in legal compliance costs it cannot avoid. In this way, the Order, through its interpretation of the 2020 Protocol, converts the protocol from a reasonable cost allocation methodology into a means of discriminating against the Company as an interstate electric utility.

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."[40] 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, as that term is used in the Commerce Clause. That is, does the law benefit in-staters and burden outsiders?"[41] Impermissible discrimination "is not limited to attempts to convey advantages on

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[38] Wilding Response at 24.
[39] *See* Order at ¶ 23-24 (The CCA "is a unique and discriminatory policy the State of Washington has engineered to impose its policy preferences on utilities' generation mixes while shifting the costs of those policy preferences to customers in other states.").
[40] *Or. Waste Sys., Inc. v. Dep't of Env't Quality of Or.*, 511 U.S. 93, 99 (1994).
[41] *Foresight Coal Sales, LLC v. Chandler*, 60 F.4th 288, 297-98 (6th Cir. 2023), *cert. denied sub nom., Chandler v. Foresight Coal Sales, LLC*, 144 S.Ct. 80 (Oct. 2, 2023).

local merchants; it may include attempts to give local consumers an advantage over consumers in other States."[42]

This "antidiscrimination principle lies at the 'very core' of . . . dormant Commerce Clause jurisprudence."[43] 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."[44] In examining state actions impacting interstate commerce, U.S. Supreme Court cases often find discriminatory practical effects in the cases of "state laws that impose burdens on the arteries of commerce, on trucks, trains, and the like."[45]

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 the Company.[46] 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 Utah customers.

The misapplication of the 2020 Protocol gives Utah consumers an advantage to the detriment of the provision of interstate electricity by the Company. RMP is likely unable to recover the CCA costs for Chehalis power that is used to serve Utah from its Washington customers. Nevertheless, the Order disallows the Company's CCA costs when it sells Chehalis power in

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[42] *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 577-78 (1997) (quoting *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 580 (1986)).
[43] *National Pork Producers*, 143 S.Ct. at 1154.
[44] *Id.* at 1157.
[45] *Id.* at 1166 (Sotomayor, concurring) (internal quotations omitted).
[46] *See NextEra Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 321-22 (5th Cir. 2022), *cert. denied*, __ U.S. __ (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).

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interstate commerce to Utah customers—sales that require the Company to incur the costs of securing CCA allowances.

The Company urges the Commission to reverse the Order as to the allocation of CCA costs and benefits because, as the Order stands today, it would not be in compliance with the dormant Commerce Clause. The Commission could achieve compliance 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 Utah rates.

5. The Order Harms the Company's Ability to Reach Its Authorized Rate of Return.

The Company's 2020 general rate case set RMP's authorized overall rate of return at 7.34% and approved "a revenue requirement increase of $31.41 million."[47] By denying the Company recovery of all costs approved in the 2020 general rate case, which includes CCA costs, the Company will be harmed in its ability to reach its authorized rate of return. If RMP cannot reach its authorized rate of return, the Company will be denied the funds sufficient to satisfy what was ordered in the 2020 general rate case.

If the Commission Will Not Reverse Its Disallowance of CCA Compliance Costs, it Should Revise the Order to Remove Chehalis Power from Utah Rates.

If the Commission applies the 2020 Protocol according to its terms, Chehalis should be designated as a System Resource, with Utah paying its share of CCA compliance costs commensurate with its share of all other generation-related costs. Otherwise, the Commission

[47] *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 20-035-04, Order, at i.

shifts the costs of complying with the CCA statute to the Company, essentially creating a disallowance "for complying with Washington law," not because the Company engaged in imprudent activity.[48]

If the Commission will not reverse its determination regarding situs assignment of CCA compliance costs, the Company renews its request made in testimony that Utah customers forgo the benefits of Chehalis' generation.[49] This result is reasonable and consistent with governing law, if Utah customers do not pay compliance costs for Chehalis. Customers in the state of Utah cannot reap the benefits of Chehalis without paying their share of *all* of the costs the Company is forced to pay to provide those benefits. There is no dispute that the Company is forced to pay CCA compliance costs.

As it made clear in its testimony, the Company does not favor this outcome. It would increase Utah rates unnecessarily. It would also set "a poor precedent for other existing and future environmental compliance costs imposed by Utah or any other state on generating resources located in those states."[50]

That said, if the Commission remains determined to designate Chehalis CCA 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 the Chehalis Resource from Utah rates. Otherwise, the Company will be required to subsidize Utah rates in a manner that is inconsistent with the approved cost allocation methodology, contrary to established ratemaking principles. Furthermore, the Order, if not corrected, would result in rates that are not just and reasonable.

[48] Wilding Response at 23:464-465.
[49] *Id*. at 23:467-24:471.
[50] *Id*. at 24:482-484.

III. CONCLUSION

It is undisputed that the Company is required to pay CCA compliance costs in order to provide Utah customers with the benefits of that plant's output. Similarly, it would be imprudent for the Company to ignore Washington law and not pay those costs. Accordingly it is prudent and necessary for the Company to pay these compliance costs. For this and all the foregoing reasons, the Commission should grant rehearing and modify its Order to allow recovery of the CCA costs or, in the alternative, remove Chehalis from Utah rates.

Respectfully submitted this 27th day of March, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2025, a true and correct copy of the foregoing document was served upon the following via email:

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