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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 Office of Consumer Services' Response to Rocky Mountain Power's Request for Review or, in the Alternative, Rehearing

Pursuant to Utah Code §§ 63G-4-301, 54-10a-303, 54-7-15, UTAH ADMIN. CODE r. 746-1, and in response to Rocky Mountain Power's (RMP) March 27, 2025, Request for Review or, in the Alternative, Rehearing seeking reconsideration of the Public Service Commission of Utah's (PSC) February 25, 2025, Order (Order) disallowing of $19,413,361 sought to compensate the Company for compliance costs it incurred due to the Washington Climate Commitment Act (CCA) , the Office of Consumer Services (OCS) submits this Response to RMP's Request for Review.

I. BACKGROUND

On May 1, 2024, RMP filed an Application for Approval of the 2024 Energy Balancing Account, requesting recovery of approximately $455 million in 2023 deferred energy balancing

account costs.[1] The costs sought for recovery included $19,413,361 in compliance costs under the CCA for power generated by the Chehalis plant that is used to serve Utah customers. The state of Washington enacted the CCA in 2021, and it went into effect at the beginning of 2023.[2] The statute requires RMP to purchase greenhouse gas allowances associated with emissions produced by generating units in Washington, including the Chehalis plant, for power used to serve non-Washington customers.[3] Yet Washington allocates free allowances to electric utilities, such as RMP, to serve the Washington retail load.[4] Thus, only the portion of Chehalis' production that is used to serve out of state customers is charged the allowance.

During the hearing, RMP argued that the CCA Allowances should be system-allocated under Section 3.1.7 of the 2020 Protocol and asserted that the allowances are akin to a generation or fuel tax.[5] However, RMP concedes that it allocates the no-cost allowances it receives for Chehalis generation from the State of Washington for the exclusive use of Washington customers as "state-specific initiatives," assigned to the situs under Section 3.1.2.1 of the 2020 Protocol.[6] The OCS, Division of Public Utilities (DPU), and the Utah Association of Energy Users (UAE) all opposed RMP's analysis:

> "Every megawatt-hour generated at Chehalis simultaneously triggers a cost and a benefit tied directly to that generation under the CCA. On the one hand, a quantity of allowances must be purchased, the cost of which RMP maintains should be allocated as a generation tax to customers in all states under Section 3.1.7 … . On the other hand, the same generation triggers the distribution of no-cost allowances for the sole benefit of Washington customers, the benefits of which RMP maintains should be situs assigned under Section 3.1.2.1 of the 2020 Protocol.[7]

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[1] Order at 1.
[2] *Id.* at 19.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 20
[6] *Id.*
[7] *Id.* at 20-21 (quoting 1 Rebuttal Test. of P. DiDomenico and D. Koehler at 7:92-99.) (cleaned up).

The OCS, DPU and UAE argue that the process proposed by RMP is contradictory, unreasonable, and discriminatory, leading to Utah Customers subsidizing Washington customers.[8] These parties also pointed out that generation taxes, unlike the CCA, impact all customers equally, including customers within the taxing state.[9]

> Therefore, the parties opposing recovery argue the compliance costs associated with the WA CCA should be treated as a state-specific initiative and situs assigned to Washington under Section 3.1.2.1 of the 2020 Protocol, which would mirror RMP's treatment of the no-cost allowances it receives from the State of Washington for Washington customers.[10]

The PSC ruled in favor of the OCS, DPU, and UAE, stating that it "utterly rejects RMP's assertion that costs associated with the WA CCA are taxes that must be system-allocated under Section 3.1.7 of the 2020 Protocol while the no cost-allowances Washington provides to its ratepayers are a state-specific initiative that must be situs-assigned under Section 3.1.2.1."[11] The PSC also rejected RMP's main argument ruling the CCA "is not a generally applicable 'generation tax.'" And noting that the 2020 Protocol defines "state-specific initiatives" broadly, the PSC ruled, we "conclude Washington's unprecedented policy, which penalizes emissions but shields its own residents from incurring the associated costs, unquestionably constitutes a "state-specific initiative" within the meaning of Section 3.1.2.1. Concluding otherwise would be patently unreasonable, unfair, and offend common sense."[12]

[8] *Id.* at 21.
[9] *Id.*
[10] *Id.*
[11] *Id.* at 22-23.
[12] *Id.* at 24.

II. INTERPRETATION OF 2020 PROTOCOL

In interpreting the 2020 Protocol, it must be kept in mind that the PSC is not bound by any technical interpretation or even a specific directive of the Protocol if, for example, a change in circumstances would result in an allocation that leads to unjust and unreasonable rates. Indeed, during the recently concluded hearing in RMP's general rate case, RMP witness Shelly McCoy admitted that the PSC is not bound by the terms of the 2020 Protocol.[13] In fact, the Protocol itself provides: "Nothing in the 2020 Protocol is intended to abrogate any Commission's right or obligation to: . . . determine fair, just, and reasonable rates . . . ."[14] Therefore, if the Protocol's allocations result in unjust and unreasonable rates, the PSC has the right and obligation to either disregard the mandates of the Protocol or interpret the Protocol in a manner that allows for the award of just and reasonable rates.

However, these principles need not be employed in this case because the plain language of the 2020 Protocol is in accordance with the PSC conclusion that the CCA's allowance costs are associated with a "state-specific initiative" that should be situs

[13] Docket No., 24-035-04, McCoy, Hearing Testimony pg. 307, ln. 21-23.

[14] 2020 Protocol pg.3, line 48-52; *In the Matter of the Application of Rocky Mountain Power for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement,* Docket at 19-035-42, Exh. JRS-1, Direct Testimony of Joelle R, Seward (Utah P.S.C., December 3, 2019).

> The proposed allocation of a particular expense or investment to a State under the 2020 Protocol is not intended to and will not prejudge the prudence of that cost or the extent to which any particular cost may be reflected in rates. Nothing in the 2020 Protocol is 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 that Commission; (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; or (3) establish different allocation policies and procedures for purposes of allocating costs and revenues within that State to different customers or customer classes.

Id. at pg. 3 ln. 46-54.

assigned to Washington.[15] In its Request for Review, RMP argues that the payments of the CCA Allowances cannot be considered payments of costs associated with a "state specific initiative" because the "2020 Protocol speaks to *acquisition* of the Resource whose costs and benefits are being allocated."[16] RMP then argues that because the Chehalis plant was acquired before the enactment of the CCA, Chehalis was not acquired in accordance with a "state specific initiative" program.[17]

This argument is unavailing. The acquisition of the resource at issue here is the purchase and or exemption of the greenhouse gas allowances themselves and not the acquisition of the Chehalis plant. "Resource" is a defined term in the 2020 Protocol and it is much broader than simply a reference to generation plants such as Chehalis. Specifically, the Protocol provides that, "**Resource**" means a Company-owned generating unit, plant, mine, long-term Wholesale Contract, Short-Term Purchase and Sale, Non-firm Purchase and Sale, or QF contract."[18] The term "Short-Term Purchase and Sale" is broad enough to include the separate acquisition of greenhouse gas allowances pursuant to the CCA involving both cost allowances for non-Washington customers and no cost allowances for Washington customers.

This approach is in accord with RMP's conclusion that the no cost allowances granted to Washington's customers should be situs assigned to Washington as associated with a "state-specific initiative," despite the fact that the Chehalis plant predates the

[15] Order at 24.
[16] RMP Request for Review at pg. 6.
[17] *Id.*
[18] 2020 Protocol, App. A; *In the Matter of the Application of Rocky Mountain Power for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement,* Docket at 19-035-42, Exh. JRS-1, Direct Testimony of Joelle R, Seward (Utah P.S.C., December 3, 2019).

CCA. Just as the no cost allowances under the CCA are situs assigned to Washington as a "state-specific initiative," so should cost allowances under the CCA for out of state customers be situs assigned as associated with a Washington "state-specific initiative," again, despite the fact that the Chehalis plant predates the CCA.

The greenhouse gas allowances in substance and character are the Washington Legislature's response to climate issues – something that fits well within the Protocol's definition of a "state-specific initiative." Therefore, consistent with interpreting the 2020 Protocol in a manor that will produce just and reasonable rates and the plain language of the Protocol, the CCA allowance costs are costs associated with a Washington "state-specific initiative" and should be situs assigned to Washington and disallowed from the Utah EBA.

That imposition of greenhouse gas allowances and exemptions, as contemplated by the CCA, is unique for at least two reasons. First, no other jurisdictions receiving electricity from the Chehalis Plant and covering an allocated share of its costs under the Protocol have agreed to the imposition of new costs. Second, the CCA creates a discriminating exemption for Washington State ratepayers from having to bear a share of the gas allowances and cannot be viewed as just another cost of doing business for all out-of-state recipients of electric services being generated from the Chehalis Plant. Instead, as the Utah PSC has recognized in its February 25, 2025, Order: "In sum, because they stem from a state-specific initiative, the CCA Allowances must be "allocated and assigned on a situs basis to the State adopting the "initiative" pursuant to Section 3.1.2.1. of the 2020 Protocol.[19] This result is consistent with the separate economic consequences that flow from the use of the Chehalis Plant to generate electricity and

[19] *In the Matter of the Application of Rocky Mountain Power for Approval of the 2024 Energy Balancing Account*, Docket No. 24-035-01, Order at 24-25. (Utah P.S.C, February 25, 2025).

the imposition and exemption of greenhouse gas allowances as promulgated by the Washington legislature.

The intent and implementing purposes captured in the CCA are at odds with the fundamental purposes of the Protocol. Washington has decided to impose costs upon all out-of-state customers who are using electricity that is generated at the Chehalis Plant while the Protocol's objective is to fairly allocate and share the costs associated with the production of electricity at plants that function as a system-wide resource. The discriminatory nature of the implementing procedures of the CCA may very well offend the Commerce Clause of the U,S, Constitution.[20] At a minimum, courts and commissions must carefully scrutinize the law and only allow its implementation if it can be construed in a way that avoids unconstitutional discrimination.[21]

This is exactly what the Utah Commission has done. The determinations made by the Commission as to how the CCA greenhouse gas allowances and exemptions should be treated under the Protocol provide a result that avoids the discriminatory effects of the Washington law that could otherwise be determined to be unconstitutional. The PSC is charged with ensuring that rates and charges it approves for Utah ratepayers are just and reasonable.[22] Working within these parameters the Commission has fulfilled its legal mandate. Attempts to reach a different conclusion would compromise the interest of Utah ratepayers and embrace a law that is conceivably unconstitutionally discriminatory under the Commerce Clause.

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[20] *Camps Newfound/Owatonna, Inc. v. Town of Harrison,* 520 U.S. 564, 577-78 (1997) (unconstitutional to give local consumers an advantage over consumers in other States.")

[21] See *State v. Miller*, 2023 UT 3, ¶ 75, 527 P.3d 1087, (The constitutional avoidance "canon provides that when a court is presented with two plausible readings of a statute, and one raises constitutional concerns, the court should choose the interpretation that steers clear of the constitutional issues.")

[22] Utah Code § 54-3-1 ("All charges made . . . by any public utility . . . shall be just and reasonable. Every unjust or unreasonable charge made . . . is hereby prohibited and declared unlawful.")

III. **CONCLUSION**

Thus, the PSC should deny RMP Request for Review or, in the Alternative, Rehearing, and reassert its conclusion that Washington's policy, which penalizes emissions but shields its own residents from incurring the associated costs, constitutes a "state-specific initiative" within the meaning of Section 3.1.2.1. Accordingly, these costs should be situs assigned to Washington and disallowed from the Utah EBA.

Respectfully submitted, April 11, 2025.

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