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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
Rocky Mountain Power's Application for Approval of the 2024 Energy Balancing Account	Docket No. 24-035-01 Division of Public Utilities' Response to Rocky Mountain Power's Request for Review, or in the Alternative, Rehearing

Pursuant to Utah Code section 54-7-15(2)(a) and Utah Administrative Code R746-1-801, the Division of Public Utilities ("Division") submits its Response to Rocky Mountain Power's ("RMP" or "Company") Request for Review, or, in the Alternative, Rehearing of the Public Service Commission of Utah's February 25, 2025, order ("Request," "Commission," and "Order," respectively). The Order denied RMP recovery of $19,413,361 from Utah ratepayers for costs the Company claims it incurred due to Washington's Climate Commitment Act ("CCA") and the Washington Greenhouse Gas Program ("WA-GHG Program").[1] For the reasons described below, the Commission should deny RMP's request for review or rehearing of the Order, and, if neither of these requests is granted, deny the Company's request to revise the

[1] Order at 27.

Order by removing Chehalis power from Utah rates.[2]

I. BACKGROUND

In its May 1, 2024, application, the Company sought to recover approximately "$455 million in deferred energy balancing costs . . . with collection over 24 months, beginning July 1, 2024, on an interim basis."[3] Hearing dates were set, several rounds of pre-filed testimony were scheduled and filed, and discovery efforts were undertaken.[4]

Following an interim rate hearing on June 13, 2024, interim rates were approved June 28, 2024, allowing interim recovery of $431,578,182.[5] The interim order denied both RMP's request for a 24-month recovery period and its request to recover associated carrying charges.[6]

A hearing on final rates was held January 22, 2025, with the Company, the Division, the Office of Consumer Services ("OCS"), and the Utah Association of Energy Users ("UAE") appearing and testifying. The Order approved the interim rates as final and adjusted final rates to account for the Commission's denial of RMP's requests to recover $19,413,361 for WA CCA costs allocated to Utah ("Disallowed WA Costs"), and $4,830,719 for Schedule 137 Prior Period Adjustments.[7] The Order also addressed other things, none of which pertain to the Request.

II. ARGUMENT

RMP fails prove it is entitled to review or, in the alternative, rehearing of the Order, or any other relief it seeks. The Commission is not bound by the 2020 Protocol[8] and ordering recovery of the Disallowed WA Costs from Utah ratepayers is prohibited by law and

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[2] *See* Request at 15-16.
[3] Scheduling Order and Notice of Hearings (May 15, 2024).
[4] *Id.* at 1.
[5] Order Approving Interim Rates (June 28, 2024) at 10-11.
[6] *Id.*
[7] Order at 27.
[8] *See Application of Rocky Mountain Power for Approval of the 2020 Inter-Jurisdictional Cost Allocation Agreement*, Docket No. 19-035-42, Order Approving 2020 Protocol (Apr. 15, 2020) ("2020 Protocol Order")

Commission orders. Even if the 2020 Protocol were deemed applicable, Utah would not be obligated to pay those costs because they are properly classified as stemming from a State-Specific Initiative or a State Portfolio, not from a System Resource. Contrary to the Company's assertions, denying the Company its requested relief does not constitute discrimination against PacifiCorp/RMP for providing interstate service. The Order does not deny RMP the revenue requirement established by the 2020 GRC Order.[9] Finally, commitments and Commission orders have clearly established that PacifiCorp properly bears the risk of differing state allocation mechanisms. In sum, it is the Company, not the Order, that disregards applicable law and cost causation principles.

A. The Commission Is Not Bound by the 2020 Protocol Despite the Company's Claims.

The Company incorrectly asserts that the Commission is bound by both the 2020 Protocol and the Company's interpretation of it. However, under Utah Code section 54-4-4, the Commission is charged with setting rates that are just, reasonable, and in the public interest, and that are not unduly discriminatory.[10]

Not only does section 54-4-4 require the Commission to disregard the 2020 Protocol under certain circumstances, but also the Commission's order adopting it[11] and the 2020 Protocol itself recognize the Commission's ability to analyze the effects of Washington law and to determine whether applying the protocol and including the resulting costs in Utah rates is just and reasonable.[12]

Moreover, any Utah rates resulting from requiring Utah ratepayers to pay the costs would

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[9] *See Apllication 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 (Dec. 30, 2020) and Order on Petition for Review, Reconsideration, or Rehearing (Feb. 26, 2021).
[10] Utah Code Ann. § 54-4-4(1).
[11] *See* 2020 Protocol Order.
[12] *See id.*

be unduly discriminatory and prohibited under Utah law.[13] On its face and in effect, the Washington laws and the WA-GHG Program discriminate against Utah ratepayers and other PacifiCorp ratepayers who do not reside in Washington. Washington ratepayers receive in effect a credit and do not bear the costs of the WA-GHG Program themselves, but all other PacifiCorp non-Washington ratepayers do. Washington cannot be permitted to impair Utah ratepayers' interest in facilities they have paid for for decades by unilaterally imposing a discriminatory tax on those facilities.

The Washington law seems to violate federal law, including the dormant Commerce Clause of the U.S. Constitution. To the extent it is viewed as a tax, it seems to also violate 15 U.S.C. § 391, which provides:

> No State, or political subdivision thereof, may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers, producers, wholesalers, retailers, or consumers of that electricity. For purposes of this section a tax is discriminatory if it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce.

Accepting the Company's argument that the Commission is bound by the 2020 Protocol and must allow the Company to recover the Disallowed WA Costs would result in rates that would not be just, reasonable, in the public interest, and that would be unduly discriminatory. The Commission's statutory responsibilities cannot be diminished or abrogated by the 2020 Protocol. RMP's arguments are not supported by law and the Request should be denied.

[13] *See* Utah Code Ann. § 54-4-4(1).

B. Even if the 2020 Protocol Somehow Applies, the Disallowed WA Costs Were Incurred through a "State-Specific Initiative" or a State "Portfolio Standard" under the Protocol and Cannot Be Allocated to Utah Ratepayers.

To the extent it applies at all, RMP is incorrectly interpreting and applying the 2020 Protocol. RMP's mistakenly characterizes the Chehalis plant and related costs as a System Resource and seeks recovery from Utah ratepayers.[14] However, the Disallowed WA Costs result from Washington's state "Portfolio Standard"[15] or its "State-Specific Initiative,"[16] and Utah is not obligated to pay such costs under the protocol.

The 2020 Protocol defines a state Portfolio Standard as:

> [t]he portion of costs associated with Interim Period Resources acquired to comply with a State's Portfolio Standard adopted, either through legislative enactment or by a State's Commission, that exceed the costs PacifiCorp would have otherwise incurred, will be allocated on a situs basis to the Jurisdiction adopting the Portfolio Standard.[17]

The WA-GHG Program costs at issue here result from the WA CCA and environmental regulations associated with the Chehalis plant.[18] The manner and time of the creation of these costs fit neatly into the Interim Period Portfolio Standard resources category. These are an incremental additional cost Utah ratepayers incur only because of the Washington legislation. To the extent the 2020 Protocol applies at all, the WA-GHG Costs should be categorized as an Interim Period Portfolio Standard resource and cannot be allocated to Utah under the existing protocol.

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[14] Request at 3-7.
[15] 2020 Protocol Section 3.1.2.1.
[16] *Id.* at Section 5.8.
[17] *Id.*at Section 3.1.2.1.
[18] The Company's attempt to differentiate the effect of the WA Clean Energy Transformation Act ("CETA") from the WA CCA does not support its argument that Utah must pay the Disallowed WA Costs. The CETA and the CCA and their effects are intertwined.

The Disallowed WA Costs also could fit into the protocol's Interim State-Specific Initiatives category, another category of costs for which Utah ratepayers are not responsible. The 2020 Protocol states:

> [c]osts 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. State-specific initiatives include, but are not limited to, the costs and benefits of incentive programs, net-metering tariffs, feed-in tariffs, capacity standard programs, solar subscription programs, electric vehicle programs, and the acquisition of renewable energy certificates.[19]

The list of examples is not exhaustive, merely illustrative. As discussed above, the benefits accrue to Washington, but PacifiCorp would assign the costs in this case only to PacifiCorp's customers in other states.

RMP characterizes these costs as a tax[20] and analogizes the WA-GHG allowance costs to Wyoming's wind tax, the California cap and trade program, and other state programs.[21] The characterization is inaccurate: Wyoming ratepayers (and the other ratepayers on PacifiCorp's system) pay the Wyoming wind tax whereas Washington ratepayers do not pay the WA-GHG Program costs because they receive a credit to offset the costs. Furthermore, the comparisons to the California cap and trade program and other state programs are unpersuasive because those programs are distinguishable from Washington's program.[22] While specific situations may arise where the California GHG program results in similar outcomes for some utilities, none are evident in this matter.

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[19] 2020 Protocol Section 5.8.
[20] Request at 9.
[21] *Id.*
[22] Washington's creation of the WA-GHG Program was put into place after the 2020 Protocol was adopted by Utah and thus Utah ratepayers are not obligated to pay the Disallowed WA Costs. Utah ratepayers are not responsible to pay costs that result from a "change[] in law[], regulation[], or circumstance." 2020 Protocol at 3.

The WA-GHG program on its face is discriminatory. In addition, as discussed above, requiring Utah ratepayers but not Washington ratepayers to pay these costs is likely illegal under federal law. Plus, requiring only Utah and other non-Washington ratepayers to pay the Washington tax likely violates the dormant Commerce Clause.[23] Washington's discriminatory law has impaired the Chehalis plant's value and imposed costs on the system. Those costs should be assigned to the greatest extent possible to Washington ratepayers.

The purpose and effect of the WA-GHG Program and related legislation is clearly to not only to benefit Washington with reduced GHG emissions but also to collect money—but only from ratepayers outside of Washington state. The program was intentionally designed to make Utah, Wyoming, Idaho, Oregon, and California pay for the program's costs. Only Washington customers receive "no cost" emission allowances, and the allowance revenue received by Washington from non-Washington ratepayers benefits only that state. No matter how the WA-GHG Program costs are categorized, no costs of the program can be assigned to Utah under the 2020 Protocol and the Order denying recovery of the Disallowed WA Costs should stand. Furthermore, removing the Chehalis plant and benefits from Utah's rates would be unreasonable, allowing one state's discriminatory policies to unilaterally change assignment of plants and impose additional costs on other states.

C. Contrary to RMP's Claims, the Order Does Not "Discriminate[] Against the Company as a Utility Providing Interstate Service."[24]

The Company makes a curious and unfounded argument that the Order takes a "neutral" protocol which "serves a legitimate purpose" and "misapplies" it, "result[ing] in 'impermissible

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[23] *See PacifiCorp v. Watson*, No. 3:223-CV-06155-TMC, 2024 WL 3415937 (W.D. Wash. July 15, 2024) where PacifiCorp argued, albeit unsuccessfully. that the "difference in treatment of in-state and exported electricity violates the dormant Commerce Clause." The U.S. District Court granted defendant's motion to dismiss as a matter of law./ PacifiCorp has appealed this decision. *See PacifiCorp v. Sixkiller,* 9th Cir., August 6, 2024.
[24] See Request at 12.

discrimination'" against PacifiCorp/RMP.[25] Given the fact that the WA CCA and the WA-GHG Program discriminate against non-Washington PacifiCorp ratepayers, including Utah ratepayers, RMP's claim that the Commission is applying the protocol to discriminate against the Company because it is providing interstate services is convoluted and without merit. The Company has always borne the risk of different allocation mechanisms in different states. That this is merely the first time Utah has been recognized the need to deviate from a broader protocol does not render this unique. In fact, Washington has maintained its own allocation method for some time, at times with no complaint at all from PacifiCorp.

Even a cursory read of this Company argument reveals its fatal flaws and that they defy logic. The Company wrote that "in the Commerce Clause context, 'discrimination' means 'differential treatment of in-state and out of state interests that benefits the former and burdens the latter.'"[26] This argument has merit, but against Washington for establishing the program and against the Company for seeking recovery of these costs. Similarly, the Company's claim that the Commission's "misapplication of the 2020 Protocol gives Utah consumers an advantage to the detriment of the provision of interstate electricity by the Company"[27] only has merit against Washington and the Company—not against the Commission.[28] RMP is mistakenly characterizing the Commission as the bad actor. The Commission merely seeks to protect Utah ratepayers against the costs and risks of another state's discriminatory action. Wyoming[29], Idaho,[30] and Oregon[31] have decided that ratepayers in their states should not pay these costs.

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[25] *Id.*
[26] *Id.* at 13.
[27] *Id.* at 14.
[28] *Pacificorp CRP, See Pacificorp v. Watson*, and *Pacificorp v. Sixkiller supra.*
[29] *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.
[30] *See PacifiCorp, d/b/a Rocky Mountain Power v. Idaho Public Utilities Commission,* Idaho Supreme Court, Case No. PAC-E-24-05.
[31] *See Pacificorp v. Public Utility Commision of Oregon, et al.* Oregon Court of Appeal, Case No. A183803

D. RMP's Claim that It Is Entitled to Relief Because the Order "Denies the Company Its Ability to Reach Its Allowed Rate of Return" and to Receive "Sufficient Funds Under the 2020 GRC Order" Misstates the Law and Rejects the Applicable Regulatory Paradigm.[32]

These arguments ignore that only "prudent" costs exceeding collected revenue can be recovered through the EBA.[33] They ignore Utah regulatory principles too.

An order resulting from a general rate case does not guarantee that the Company will recover the authorized revenue requirement. The Company is not guaranteed that it will reach its allowed rate of return ("ROR"), but only that it will have the opportunity to do so through complying with the law and, frankly, through making good business decisions. Furthermore, the Commission is not a guarantor of what other states may legislate and allow. Disallowance in another state where costs should be properly allocated is a problem for the Company to address in that state, not in Utah when it refuses to be burdened by discriminatory legislation and regulation. To state that the Order denies the Company its ability to reach its ROR, ignores that only prudent costs can be recovered and conflates system-wide recovery with the need for Utah rates to recover what is just and reasonable to provide service to Utah ratepayers. Accepting the Company's argument would also turn Utah's regulatory paradigm into a formulistic, non-analytical cost recovery exercise. Relatedly, the Company is not guaranteed "sufficient funds to satisfy what was ordered in the 2020 general rate case,"[34] but is given only the opportunity to acquire sufficient funds (and is not prohibited from collecting funds exceeding the revenue requirement) through compliance with the law and wise management.

When costs are appropriately assignable to another state, Utah does not do the Company a disservice by not paying them when the other state refuses to do so. The other state is the one

[32] *See* Request at 15.
[33] *See, e.g.,* Utah Code Ann. § 54-7-13.5(1)(d) and (h).
[34] Request at 15.

that has harmed the Company's interest. That Washington fails to recognize the costs of its discriminatory conduct is a PacifiCorp problem in Washington, not in Utah. These Company claims provide no grounds for relief.

E. Company Commitments and Commission Orders Establish that the Company Bears the Risk of Differing Allocation Mechanisms.

RMP's analysis claiming it is entitled to recovery of the Disallowed WA Costs omits any discussion of the principle firmly established and observed throughout the post-merger history of PacifiCorp that its shareholders bear the risk of different allocation mechanisms among the states where it does business. This was summarized well by the Commission in its 2012 Report and Order in Docket No. 02-035-04.

> When different allocation methods are used in the six states, as is now the case, the Company might recover more or less than its total costs through customer rates.
>
> The possibility of less than full system cost recovery is not new. The potential for cost recovery shortfall was anticipated at the time of each merger leading to the present PacifiCorp ownership and directly addressed by merger conditions in past Commission orders. For example, the September 28, 1988, Commission order approving the Utah Power and Pacific Power merger imposed a number of conditions on the merger including:
>
> The Merged Company shall agree that PacifiCorp shareholders shall assume all risks that may result from less than full system cost recovery if inter-divisional allocations methods differ among the Merged Company's various jurisdictions.[35]

Of course, the Company bearing the risk of differing cost allocations may have a bearing on its overall risk profile and the allowed rates of return. But such a difference does not render one state's ratemaking constitutionally or statutorily deficient. A fact the Company has long acknowledged. The states have endeavored to minimize this risk through interstate agreements.

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[35] *In the Matter of the Application of PacifiCorp for an Investigation of Inter-Jurisdictional Issues,* Docket No. 02-035-04 Report and Order at 2 (February 3, 2012) (internal quotation omitted) *See also Application at 7 paragraphs 15 and 16.*

Notably, Washington has long refused to participate in those agreements, to which PacifiCorp has acquiesced. Ironically, now that other states might deviate from an allocation Washington would prefer, the Company complains it cannot bear such differences.

F. Utah's Lack of Responsibility for Paying the Deferred WA Costs Does Not Entitle RMP to Deny Utah Ratepayers Chehalis Power.

RMP is incorrectly linking Utah's payment of the Disallowed WA Costs with its right to receive benefits from Chehalis. For the reasons stated above, Utah ratepayers are not responsible for paying those costs. Requiring Utah to pay the Disallowed WA Costs would deprive Utah ratepayers of some of their beneficial share of Chehalis because Utah ratepayers would have to pay more than their fair share while Washington ratepayers would not pay any of these costs, increasing Utah ratepayers' burden and reducing their benefit. One state cannot be permitted to present another state's Commission and ratepayers with a choice between completely removing itself from participation in a plant its rates have long invested in and paying discriminatory costs imposed by the other state. This is inimical to both constitutional and statutory provisions as noted above and to principles of fundamental fairness. The Company bears risks for which regulatory commissions compensate it. That sometimes those risks turn to realities creates no unfairness even when they affect earnings. This is especially so after decades of protection from those risks by the commissions.

III. CONCLUSION

RMP fails to make its case that review or rehearing of the Order, or the other relief it requests, is required. The Order should not be reversed, granting rehearing is not warranted, and no cause exists to grant other relief requested.

The Commission is charged with establishing rates that are just, reasonable, in the public interest, and are not unduly discriminatory. Applying the 2020 Protocol consistent with the Company's arguments would prohibit the Commission from ordering rates compliant with its statutory obligation. Even if the protocol applied, the Company's claim that it should recover the disallowed costs fails because the Company, not the Commission in its Order, is applying the 2020 Protocol incorrectly.

RMP's other arguments are equally without merit. Utah ratepayers are not obligated to pay the Disallowed WA Costs. Chehalis Power should not be removed from Utah rates and disallowance does not harm the Company as alleged. The Company bears the risk of differing allocations between states, for which it is compensated through allowed returns on equity that recognize a broad spectrum of business risks and have been set above the cost of capital.

Respectfully submitted this 11th day of April 2025.

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