BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 420

In the Matter of PACIFICORP, dba PACIFIC POWER, 2024 Transition Adjustment Mechanism.	**STAFF CROSS-EXAMINATION EXHIBIT**

Pursuant to the Administrative Law Judge (ALJ)'s Memorandum on Hearing Procedures issued August 3, 2023, Staff of the Public Utility Commission of Oregon files the following cross-examination exhibit.

Staff Exhibit 1300 – Staff Response to PAC Data Request No. 11.

DATED this 1st day of September 2023.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

/s/ Stephanie S. Andrus

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Date: August 31, 2023

TO:
DATA REQUEST RESPONSE CENTER
PACIFICORP
825 NE MULTNOMAH STREET STE 200
PORTLAND OR 97232
datarequest@pacificorp.com

FROM: Rose Anderson
Senior Economist
Energy Resources and Planning Division

OREGON PUBLIC UTILITY COMMISSION
Docket No. UE 420 – PacifiCorp Data Request filed August 17, 2023

Data Request No 11:

11. Refer to Staff/1000, Anderson/17, lines 4 – 5. Staff testifies that the impact of the Washington Cap and Invest Program is an "issue to be a state energy policy and as such should be entirely born by Washington per MSP guidelines." What is the basis for this conclusion? In particular, please identify the relevant provision in the 2020 Protocol that Staff has relied on and provide a detailed explanation of why Staff believes the identified provision of the 2020 Protocol governs.

OPUC Response No 11:

Section 5.8 of the MSP provides:

> ***Costs and benefits resulting from a State-specific initiative will continue to be allocated and assigned on a situs basis to the State adopting the initiative*. Historically, these have included, but are not limited to, programs such as incentive programs and customer and community energy generation programs, but have not included local fees or taxes related to the ongoing operation of existing transmission and generation facilities within a State. As new issues arise, PacifiCorp will bring each issue to the MSP Workgroup to discuss whether each issue is a State-specific initiative, and, if not, whether a different allocation method is appropriate. (Emphasis added.)**

The State of Washington has described its Climate Commitment Act as duplicative of its Clean Energy Transformation Act (CETA). CETA requires electric utilities serving customers in Washington to have 100 percent renewable or non-emitting resources by 2045. To avoid imposition of duplicative energy costs from the CCA and CETA on Washington utility retail customers, the CCA provides utilities no-cost allowances to mitigate the cost burden:

> **"[T]he Clean Energy Transformation Act, Chapter 19.405 RCW, requires electric utilities serving customers in Washington to have portfolios that are greenhouse gas neutral by 2030 and 100 percent renewable or non-emitting by 2045. RCW**

> **19.405.010(2). This is no small task and it will require significant investment on the part of the utilities. Those investments will be passed along to each utility's ratepayers as the required change-over to all renewable and non-emitting resources are reflected in rates. Adding Climate Commitment Act compliance on top of these existing obligations would create a duplicate mandate on utilities, further increasing costs to consumers absent legislative intervention. As a result, the Legislature made the policy decision in the Climate Commitment Act to ensure that compliance with the Act would not interfere with clean energy obligations or result in duplicative consumer energy costs from these burdens. RCW 70A.65.120(1). Specifically, the Act provides that those utilities subject to the Clean Energy Transformation Act are eligible for no-cost allowances "in order to mitigate the cost burden of the program on electricity customers."[1]**

Consistent with Section 5.8 of the MSP, Staff believes the costs of the CCA should be allocated and assigned on a situs basis to the State adopting the initiative until the CCA is examined by the MSP workgroup and consensus is reached on the appropriate allocation. Absent that, the appropriate allocation would be determined in the negotiation of the next Protocol.

Staff acknowledges that PacifiCorp states the CCA is a tax like other taxes imposed on utilities and allocated on a system basis. However, the State of Washington has defended claims the CCA violates the dormant commerce clause by arguing the CCA is duplicative to its CETA, which is not a tax. While taxes adopted by States have been allocated on a system basis, Staff does not believe it is appropriate to accept allocation of this legislation without subjecting it to the review allowed by the MSP.

The adjustment associated with this argument is misstated at Staff/100, Anderson/17. The correct adjustment is to remove all the Oregon-allocated CCA costs in PAC's TAM filing, which are currently forecast to be $20,943,596.

Staff's adjustment removing all CCA costs was not in its Opening Testimony. Staff's proposed adjustment removing all CCA costs was determined after further review and analysis concerning the appropriate treatment of the costs under the MSP. This adjustment is separate and alternative to the other Staff proposed adjustment to PAC's CCA costs.

[1] *INVENERGY THERMAL LLC, and GRAYS HARBOR ENERGY LLC, Plaintiffs, v. LAURA WATSON, in her official capacity as Director of the Washington State Department of Ecology, Defendant*, Defendant's FRCP12(c) Motion to Dismiss, February 16, 2023.