BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 420

In the Matter of PACIFICORP, dba PACIFIC POWER, 2024 Transition Adjustment Mechanism.	**STAFF REPLY BRIEF**

I. Introduction.

Pursuant to Administrative Law Judge (ALJ) Mapes' September 8, 2023 Scheduling Memorandum, Staff of the Oregon Public Utility Commission submits this Reply Brief regarding treatment of Washington State Climate Commitment Act (CCA) related costs in PacifiCorp's 2024 Transition Adjustment Mechanism (TAM). In Opening Testimony, Staff recommended a disallowance to PacifiCorp's TAM 2024 revenue requirement based on an imputed share of "no-cost allowances" provided to PacifiCorp to offset costs of the program for its retail customers in Washington. In Reply Testimony, Staff put forth an alternate adjustment, recommending the Commission remove all costs of the CCA from PacifiCorp's TAM 2024 revenue requirement because the costs were appropriately situs assigned to Washington rather than allocated on a system basis to all jurisdictions in which PacifiCorp operates.

PacifiCorp opposes Staff's proposed adjustments removing costs for the CCA program from its TAM revenue requirement, arguing the adjustments deviate from well-established rate making principles, are contrary to the Commission-approved 2020 Protocol, and would set a troubling precedent penalizing compliance with Washington Law and undermining Oregon's own environmental policy.[1] Staff's responses to these arguments are below.

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[1] PacifiCorp's Opening Brief, p. 3.

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1 **A. Staff's proposed adjustments do not violate traditional ratemaking principles.**

2 PacifiCorp notes that CCA-related costs in the 2024 TAM are to offset emissions from its
3 Chehalis Natural Gas Plant located in Washington. PacifiCorp argues that Chehalis generation
4 provides significant benefits to Oregon customers, even with the additional CCA, and therefore
5 under traditional ratemaking principles, "Oregon customers should pay for the costs of Chehalis
6 generation."[2] The flaw with PacifiCorp's argument is that the benefit associated with the CCA is
7 not energy production but greenhouse gas (GHG) emission reduction and other climate-change
8 related actions that benefit residents in the State of Washington.

9 The CCA establishes emissions-reduction targets for the State of Washington in 2030,
10 2040, and 2050, and requires covered entities such as PacifiCorp to meet those targets. Covered
11 entities meet their reduction target by reducing emissions or obtaining "compliance instruments."
12 To obtain compliance instruments, entities can 1) invest in in-state "offset projects" that reduce
13 or avoid GHG emissions that would otherwise occur within the state of Washington or out-of-
14 state offset projects that provide direct environmental benefits to Washington, 2) purchase offsets
15 from entities that have completed an offset project, or 3) purchase offset "allowances" from the
16 State.[3] Each permitted compliance requirement under the CCA is intended to benefit residents in
17 the State of Washington. Accordingly, if the appropriate allocation of the costs of the CCA is
18 based on who benefits, the residents of Washington should pay.

19 Staff recognizes that PacifiCorp's argument regarding traditional principles of cost
20 allocation focuses not on who benefits from the CCA, but who benefits from the production of
21 energy from GHG-emitting resources subject to the CCA. Staff acknowledges that costs
22 associated with the production of energy are typically allocated to those who are served by the
23 energy. However, Staff disputes that the costs of the CCA are associated with the production of
24 energy. As discussed above, PacifiCorp's costs to comply with the CCA are costs incurred for

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[2] PacifiCorp's Opening Brief, p. 5.

[3] WAC 173-446-595.

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separate investments in offset projects, or instruments that represent those offset projects, that by definition provide independent **direct** benefits to residents of the State of Washington.

Finally, even if the costs of an investment program like the CCA would be allocable to users of GHG-emitting energy under principles of traditional ratemaking, those principles are superseded in this case by the allocation methodology in the 2020 Protocol.

B. Costs of the CCA should be assigned to Washington under the 2020 Protocol.

Staff does not dispute that reducing GHG emissions benefits everyone. However, this sentiment does not underlie allocation of carbon-reduction costs in the 2020 Protocol. Instead, the 2020 Protocol is grounded on the principle that States must absorb costs of their own state initiatives related to carbon reduction. As the Utah Public Service Commission stated when it approved an extension of the 2017 Protocol from December 31, 2018, to December 31, 2019,

> [W]e respect principles of interstate comity and the right of each state legislature and utility commission to pursue the policy interests of their respective states as they see fit. However, one state does not have the power to dictate or impose its policy priorities on another. More pointedly, the Oregon legislature has no authority to dictate how electricity is produced in Utah or any other state, and the PSC will not allow Utah ratepayers to absorb costs that stem from Oregon's policy choices. Indeed, we have concerns about the constitutionality of Oregon's legislative effort to affect coal fired generation in other states. *See, e.g. North Dakota v. Heydinger,* 825 F.3d 912 (8th Cir. 2016) (affirming district court's invalidation of Minnesota statute that purported to regulate how electricity was produced in other states with circuit judges concurring in judgment but disagreeing as to whether Minnesota statute was unlawful as violative of the dormant commerce clause or preempted by the Federal Power Act). Regardless of whether a federal court would uphold its statute, Oregon must bear the cost of its policy choices. To the extent Oregon's legislative policy proscriptions increase system costs for any state, those costs should be passed onto Oregon's ratepayers.[4]

Similarly, the Wyoming Public Service Commission made clear its support of the 2020 Protocol was based at least in part on its conclusion that "continuation of the key cost allocation features of the 2017 Protocol requiring states to bear the incremental costs resulting from their unique state policies is in the public interest."[5]

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[4] *In the Matter of the Application of Rocky Mountain Power to Extend the 2017 Protocol through December 31, 2019*, Docket No. 17-035-06, March 23, 2017 Order, Utah P.S.C. (2017 WL 1196148).

[5] Wyoming Public Service Comm. Docket No. 20000-572-EA-19, Nov. 30, 2020 (2020 WL 7409821).

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The requirement to bear the incremental costs resulting from unique state policies is implemented in Section 3.1.2.1 of the 2020 Protocol regarding "State-Specific Initiatives." That section provides:

> 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. 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.[6]

The CCA is a state initiative as contemplated by the 2020 Protocol. The CCA is implemented to obtain the Washington State-specified goal of eliminating greenhouse gas emissions. PacifiCorp has the option to comply with the CCA by distinct and identifiable investments in "offset projects" that benefit Washington," compliance instruments that represent such offset projects, or state-issued allowances. Under Section 3.1.2.1, the costs associated with investments into offset projects or other compliance instruments to comply with a state-initiative are assigned situs.

Furthermore, the CCA is not, as PacifiCorp asserts, a production tax properly allocated on a system basis under Section 3.1.7 Miscellaneous Costs and Taxes. Section 3.1.7 provides:

> Miscellaneous costs will be allocated as follows:
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> - Generation-related dispatch costs and associated plant will be allocated on the SG Factor.
> - Miscellaneous regulatory assets and liabilities, and miscellaneous deferred debits will be allocated with the appropriate allocation factor depending on the related assets or underlying costs.
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> Taxes and fees will be allocated as follows:
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> - Income taxes will be calculated using the federal tax rate and PacifiCorp's combined State effective tax rate. State-specific Schedule M and deferred income tax amounts will be allocated using the Company's tax software system. Consistent with prior system allocation methods, the Washington Public Utility tax is allocated using the SO Factor in lieu of a Washington income tax.

[6] PAC/1316, pp. 11-12.

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- Franchise taxes, revenue related taxes, Commission assessments and fees, and usage related taxes are situs or pass through.
- Property taxes are system allocated based on gross plant and allocated on a Gross Plant System ("GPS") Factor.
- Generation and fuel-related taxes will be allocated using the SG Factor.
- Other taxes such as payroll taxes are embedded in expenses or capital costs.[7]

Contrary to PacifiCorp's assertion, the investments required under the CCA do not fit within any of the "miscellaneous cost" or "taxes and fees" categories above and are not appropriately allocated on a system basis under the 2020 Protocol:

PacifiCorp asserts that the Oregon customers routinely pay for environmental compliance costs imposed by other states and the GHG allowance costs should be treated no differently.[8] PacifiCorp argues:

> Oregon rates include: costs imposed by Washington for fish passage investments at the Merwin Dam located in Washington; costs imposed by Utah for emission control equipment on Utah generation facilities; costs imposed by Wyoming for emission control equipment on Wyoming generation facilities; costs imposed by Utah for environmental reclamation of the Deer Creek mine; costs imposed by Wyoming for environmental reclamation of the Bridger Coal Company (BCC) mine; and costs imposed by Wyoming for wind generation from Wyoming wind plants. Similarly, customers in other states routinely pay environmental compliance costs imposed by Oregon on facilities located in this state, such as the Portland Harbor remediation costs and costs associated with environmental remediation of retired manufactured gas plants.[9]

The examples cited by PacifiCorp are inapposite.

First, the CCA costs are not a "production tax" like the Wyoming Wind Tax. The Wyoming Wind Tax is an excise tax on each megawatt-hour of electricity generated by wind in the state of Wyoming. It is not designed to discourage wind production or to facilitate some environmental goal of the State. Further, the tax is truly based on the production of electricity and is not, like the CCA, a requirement to make separate investments in offset projects or compliance instruments representing offset projects.

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[7] PAC/1316, pp. 13-14.

[8] PAC Opening Brief, p. 11.

[9] PAC Opening Brief, pp. 11-12.

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The costs "imposed" by Utah and Wyoming for emission control equipment are costs to comply with the federal Regional Haze Act. The emission control equipment at issue was required under Wyoming's and Utah's State Implementation Plans (SIPs) submitted to comply with federal requirements.[10] Investments to satisfy federal requirements are not the same as voluntary state initiatives. Similarly, Staff disagrees that costs for the reclamation activities for the Deer Creek and Bridger Coal Company mines are the results of voluntary state initiatives. And, costs for fish passage investments at the Merwin Dam were "required by the Lewis River Settlement Agreement [executed in 2004 between PacifiCorp and federal and state agencies] and the Federal Energy Regulatory Commission (FERC) licenses issued to the Company for the Merwin, Yale and Swift No. 1 Hydroelectric Projects."[11] FERC license requirements cannot be classified as unique state initiatives.

Staff recognizes the similarities between the California GHG emissions program and Washington's CETA and CCA. However, the charges and benefits of the California GHG are a necessary component of participation in the Energy Imbalance Market (EIM), which the Commission supports.

Finally, PacifiCorp's reliance on an order concerning allocation of costs for remediation projects by Northwest Natural Gas Company (Portland Harbor), is inapposite because allocations

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[10] *In the Matter of PacifiCorp, dba Pacific Power, Request for a General Rate Revision*, Docket No. UE 246, Order No. 12-493 at 17-20 (Dec. 20, 2012) "In 1999, the Environmental Protection Agency (EPA) issued its Regional Haze Rule (RHR) in compliance with the Clean Air Act (CAA) . . . The EPA requires all states containing sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area to submit a Regional Haze State Implementation Plan (SIP) that ensures reasonable progress toward the national regional haze goals, including emission limits and schedules of compliance . . . Rather than requiring source-specific BART controls, Section 309 allows the participating states to establish regional milestone targets for annual S02 emissions with a "backstop" S02 emissions trading program that is triggered if the milestone targets are exceeded. . . Both Wyoming and Utah elected to participate in the Section 309 alternative program for S02 emissions. Both states submitted SIPs to the EPA[.]"

[11] UE 374 PAC/900, Hemstreet/4. See also PAC/900, Hemstreet/23. "The [FERC] licenses incorporate the provisions of the comprehensive multi-party Lewis River Settlement Agreement (Settlement Agreement) entered into by the Company in 2004 with federal and state agencies, local governments, local Tribal governments, non-governmental entities, and conservation groups."

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for NW Natural are not governed by the 2020 Protocol.

C. PacifiCorp's argument Staff's proposed adjustment penalizes PacifiCorp is misplaced.

PacifiCorp argues that Staff's proposed adjustment would penalize PacifiCorp by making the Company bear the costs of compliance with the CCA. This is incorrect. Staff does not argue that PacifiCorp itself must absorb the cost to comply with the CCA. Instead, Staff argues the costs PacifiCorp incurs to comply with Washington's GHG emission reduction program are assignable to Washington under the 2020 Protocol. If PacifiCorp is forced to absorb any CCA costs because of Staff's recommendations, it is because PacifiCorp is seeking recovery inconsistently with the 2020 Protocol and thereby from the wrong state.

D. Staff's recommendations are not inconsistent with Oregon's own environmental policy.

PacifiCorp's argument Staff's recommendations are inconsistent with the State's own Climate Change goals is also incorrect. Staff's recommendation has nothing to do with the merit of Washington's CCA but is centered on application of the allocation methodology in the 2020 Protocol. It has been a tenet of the MSP that each State should bear the costs of its own policy initiatives. The OPUC has abided by this tenet with respect to its own programs and costs. Although the CCA achieves the same emission reduction goals as Oregon legislation, the CCA is specifically designed for the benefit of Washington residents. The fact the OPUC supports the goals of the CCA does not mean Oregon ratepayers should pay an additional $20 million in electricity rates to benefit Washington residents. Oregon pays for its own energy policies. Oregon should not be penalized by fully paying for its own policies AND paying for other states' energy policies as well.

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1 **II. Conclusion**

2 For the foregoing reasons, Staff recommends the Commission adopt its proposed

3 adjustment removing costs of the CCA from PacifiCorp's TAM revenue requirement.

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5 DATED this 2nd day of October 2023.

6 Respectfully submitted,

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