BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR AUTHORITY TO INCREASE ITS RETAIL ELECTRIC SERVICE RATES BY APPROXIMATELY $140.2 MILLION PER YEAR OR 21.6 PERCENT AND TO REVISE THE ENERGY COST ADJUSTMENT MECHANISM	DOCKET NO. 20000-633-ER-23 (Record No. 17252)

WYOMING INDUSTRIAL ENERGY CONSUMERS' RESPONSES TO THE WYOMING COMMISSION'S FOURTH SET OF DATA REQUESTS

The Wyoming Industrial Energy Consumers ("WIEC") provides the attached responses to the Wyoming Commission's ("WPSC") Fourth Set of Data Requests to WIEC.

Respectfully submitted this 5th day of October 2023.

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WIEC's Responses to the WPSC's Fourth Set of Data Requests
Docket No. 20000-633-ER-23

WPSC 4.6: In Exhibit 2.6 Rebuttal Testimony of Joelle Steward, the Company states, "If Wyoming customers are going to receive the benefits of the Chehalis plant—in the form of lower net power costs—then Wyoming customers should pay the costs to generate at Chehalis, including the costs to comply with Washington law. Both WOCA's and WIEC's adjustments are contrary to sound public policy and contrary to the 2020 Protocol."

RESPONSE:

WIEC disagrees with this statement. As an initial matter, WIEC believes that the costs to comply with Washington's cap-and-invest law in this instance are most appropriately categorized as costs associated with a state-specific initiative that should be allocated and assigned on a situs basis to the state adopting the initiative (Washington) pursuant to Section 5.8 of the 2020 Protocol. WIEC's position is based on the fact that, unlike other local fees or taxes related to the ongoing operation of existing generation facilities that are allocated to customers in all states, customers in Washington are not being required to pay for the costs to comply with the cap-and-invest law. WIEC views the Washington cap-and-invest law as equivalent to the requirements under HB 200 in Wyoming, where the incremental costs for exploring compliance with the low-carbon portfolio requirements are being allocated and assigned to Wyoming on a situs basis. Further, while the 2020 Protocol creates a methodology to allocate costs, it is the Wyoming Commission's responsibility to decide what costs Wyoming customers should pay for in Wyoming retail rates, not the Washington State Legislature or the Washington Utilities and Transportation Commission. Please see WIEC's response to WPSC Data Requests 4.7 through 4.11.

Respondent: Bradley Mullins and Kevin Higgins

Witness: Bradley Mullins and Kevin Higgins

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Docket No. 20000-633-ER-23

WPSC 4.7: Is WIEC's adjustment contrary to sound public policy in Wyoming?

RESPONSE:

No. Public policy in Wyoming needs to be established by the Wyoming State legislature and the Wyoming Public Service Commission. If another state imposes costs on a utility in pursuit of its own state policies, it is consistent with sound public policy and the 2020 Protocol for the state imposing the costs to bear the financial burden of that cost. Holding a state accountable for the financial burden it imposes on utilities ensures that policymakers carefully consider the economic implications of their decisions.

This is particularly true in instances such as the CCA, where Washington has exempted its own citizens from paying the policy costs. This creates an inequitable situation, in which customers in other states such as Wyoming may face a competitive disadvantage or financial burden not experienced by Washington customers. Exempting in-state Washington customers also undermines the credibility of the CCA. If Washington customers are not willing to bear the same costs they would impose on other states, it raises questions about the necessity and effectiveness of the CCA itself.

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Witness: Bradley Mullins and Kevin Higgins

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Docket No. 20000-633-ER-23

WPSC 4.8: Is WIEC's adjustment contrary to the 2020 Protocol?

RESPONSE:

No. A foundational principle of the 2020 Protocol is that "[s]tates are responsible for the cost they impose on the system, whether it is customer usage or state policies such as renewable portfolio standards"[3] While PacifiCorp's obligations under the CCA may be calculated in a way that uses generation from the portion of the Chehalis plant that is deemed to be included in Wyoming rates, that does not alter this core principle of the 2020 Protocol.

The CCA is a state policy established by the Legislature of the State of Washington to reduce greenhouse gas emissions. The policy relies on allowances that must be purchased from the Washington Department of Ecology based on a formula established in regulation. The policy obligations are calculated in a way that includes generation that is otherwise applicable to Wyoming under the 2020 Protocol. Be that as it may, the 2020 Protocol does not require States to pay for the cost of another state's policy solely on the basis that the formula used to calculate the cost relies on generation, or other allocable items, attributable to other states.

Section 5.8 of the 2020 protocol outlines the treatment of state specific initiatives, stating generally "[c]osts 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." While Section 5.8 states that "Historically, these … have not included local fees or taxes related to the ongoing operation of existing transmission and generation facilities within a State," this historical treatment is not binding for a new program, nor is this historical exception for local fees or taxes relevant to a program that is as exceptional as the CCA. To the contrary, faced with a new program such as the CCA, the 2020 Protocol requires PacifiCorp to "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." PacifiCorp, however, has not done this, and has simply concluded that in the absence of consensus amongst the 2020 Protocol signatories, that the CCA costs are to be treated like a generation tax.

While CCA allowances do not necessarily fall squarely under any provision of the 2020 Protocol, the allowances that PacifiCorp must purchase for the CCA are most akin to Renewable Energy Certificates ("REC") that must be purchased to meet the Renewable Portfolio Standards ("RPS") obligations of states such as Oregon. Under § 3.1.2.1. of the 2020 Protocol, the costs of purchasing RECs for a state RPS are situs assigned to the state imposing the RPS as follows:

> 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.

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[3] See e.g. PacifiCorp Multi-State Process Discussion with the Wyoming Corporations, Elections & Political Subdivisions Committee, May 21, 2018 (available at https://www.wyoleg.gov/InterimCommittee/2018/07-20180521JointCorporations_52118JKL.pptx)

Therefore, in the absence of consensus among the 2020 Protocol signatories regarding the treatment of the CCA, WIEC's view is that CCA allowance costs are most appropriately considered costs associated with complying with a State-specific initiative, like RECs, and they should be situs assigned as a State-specific initiative.

PacifiCorp alleges that the expense associated with procuring CCA allowances constitutes a generation or fuel related tax under § 3.1.7 of the 2020 Protocol. WIEC disagrees. While the legal status of the CCA as a tax versus a regulation may be subject to debate, the cost of purchasing CCA allowances was not contemplated as a potential generation or fuel related tax at the time that the 2020 Protocol was approved by the Commission. The purpose of the CCA is to enforce the policy objectives of Washington State. It is not a uniform levy that applies to all generation in the state, like the Wyoming wind tax. The cost of the program is also an order of magnitude higher than any other type of generation tax in any other state and is also unique, in that it only applies to out-of-state customers. Given these circumstances, WIEC does not support PacifiCorp's interpretation that the CCA is a generation tax.

Finally, it is also important to recognize that Washington does not participate in the 2020 Protocol allocation method used in all other PacifiCorp states. Washington uses the Washington Interjurisdictional Allocation Method ("WIJAM") outlined in Appendix F of the 2020 Protocol. Therefore, the agreement reached in § 3.1.7 does not necessarily implicate potential taxes imposed by Washington State, with the exception of the Washington Public Utility Tax, which is expressly identified in that section.

And regardless of the interpretation of individual provisions of the 2020 Protocol, the Commission always retains the ability to determine what it believes to be just, reasonable, and in the public interest, particularly in light of changes in laws and regulations. As the Introduction to the 2020 Protocol states "[n]othing 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; [and] (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."

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WPSC 4.9: What are WIEC's thoughts on the Company's proposal to withhold benefits from Chehalis plant if Wyoming does not pay the Washington Cap and Invest Program tax?

RESPONSE:

WIEC disagrees with the Company's proposal regarding Chehalis, which is undeveloped. For example, it is unclear what other resources and associated costs and benefits would be allocated to Wyoming to replace Chehalis and whether the CCA would be included in system dispatch assumptions under that alternative allocation approach. Further, the Washington CCA is not a benefit to Wyoming customers; it is a harm to Wyoming customers. If Chehalis were to be removed from Wyoming customer rates, that would potentially increase Wyoming rates. Suggestions that Wyoming may be forced to remove Chehalis from its resource portfolio if it does not receive an allocation of the Washington CCA costs is not a benefit to ratepayers and not consistent with the 2020 Protocol.

In contrast, the benefit of the allowances that are purchased for compliance with the CCA are the policy objectives that Washington State is attempting to achieve with the program, not necessarily, the benefit of the generation itself. The benefit of the CCA is the greenhouse gas emission reductions generated by the policy program. Imposing allowance costs on generation from Chehalis, however, does not necessarily reduce greenhouse gas emissions attributable to Wyoming customers. Using the sensitivity studies PacifiCorp presented in its initial filing, removing the Washington CCA actually increased Wyoming's CO2e emissions, as detailed in the following table:

	Initial Filing NPC MWH			No CCA Sensitivity*			
Category	**MWh**	**Emission Factor****	**MT CO2e**	**MWh**	**Emission Factor****	**MT CO2e**	**MT CO2e Change**
Sales	(4,858,467)	0.43700	(2,123,150)	(4,922,866)	0.43700	(2,151,292)	(28,143)
Purchases	20,880,522	0.43700	9,124,788	20,810,550	0.43700	9,094,210	(30,578)
Gas	18,014,643	0.43540	7,843,575	18,202,365	0.43540	7,925,310	81,734
Coal	21,980,711	1.06140	23,330,326	21,966,418	1.06140	23,315,156	(15,170)
Non-Emitting	10,622,304	-	-	10,583,247	-	-	-
Total	**66,639,713**	**0.5729**	**38,175,540**	**66,639,713**	**0.5730**	**38,183,383**	**7,843**

*See Mitchell workpaper Aurora 2024 NPC Master Base_WY_08 CONF
** See WAC 173-446-230(2)(d) and WAC 173-444-040(4)

And even if there were greenhouse gas reductions to Wyoming associated with the Washington CCA, it would be up to the state of Wyoming, including the Wyoming Legislature and the Wyoming Public Service Commission to determine whether the cost, of approximately $9,559,205 Wyoming allocated, justifies such a reduction.

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WPSC 4.10: Should all aspects (revenue, expenses, rate base, deprecation, taxes, etc.) of Chehalis be removed if the benefits are removed as proposed by the Company?

RESPONSE:

No. As a threshold matter, Wyoming customers have paid for the Chehalis power plant for many years and removing it from Wyoming rates would be harmful to Wyoming customers. This would be the equivalent of Wyoming forcing Washington to remove all Wyoming Wind plants included in Washington customer rates. If Chehalis is to be removed from Wyoming rates and reassigned to Washington, there needs to be a reconciliation of the lost value to Wyoming customers as a result of the reassignment to Washington. It is also unclear what resources would be assigned to Wyoming to replace the costs and benefits from Chehalis.

If it is to be removed from rates, however, then it would be appropriate to remove all costs, including those identified in the request.

Respondent: Bradley Mullins and Kevin Higgins

Witness: Bradley Mullins and Kevin Higgins