January 26, 2022

ATTN: Luke Martland
Washington Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: Cap-and-invest program rules (Chapter 173-446 WAC)

Avista provides electricity to 402,000 customers and natural gas to 368,000 customers across four northwestern states, including Washington.[1] Since Avista's founding in 1889, we've served our customers with an electric generation resource mix that is more than half renewable, allowing us to keep our carbon emissions among the lowest in the nation. We also aim to serve our customers with a carbon-neutral supply of electricity by the end of 2027 and with 100% clean electricity by 2045.[2] On the gas side, we offer our customers the option of supporting Renewable Natural Gas (RNG), and we have set a goal to achieve carbon neutrality by 2045.[3] Our company is committed to reducing greenhouse gas emissions while providing our customers reliable, affordable essential energy services.

Avista appreciates the opportunity to provide further comments on the Washington Department of Ecology's (Ecology) Climate Commitment Act (CCA) cap-and-trade program. In doing so, Avista notes the speed at which Ecology must promulgate these rules under the CCA statute and notes it has consulted with other utilities on Draft Rule recommendations, as reflected in the Joint Comments submitted today.

Additionally, Avista wishes to note that it provides these comments with the intent of making the CCA as effective as possible while avoiding unintended, but harmful, consequences. Should compliance costs for utilities rise too quickly, this will not necessarily create incentives for electrification. In our customers' case—many who live in rural communities or low-income households—fuel substitution with wood, propane, kerosene, wood pellets could occur, thereby resulting in higher emissions when compared to natural gas. Avista hopes the final CCA program will provide a path for accomplishing CCA emission reduction goals in a meaningful, sustainable manner.

Setting the No-Cost Allowance Trajectory to Protect Low-Income Customers

Avista supports achieving significant emissions reductions in the energy sector through the Climate Commitment Act and other measures, as demonstrated by our adoption of clean energy goals for both the electric and gas sector ahead of legislation. However, while Avista will make every effort

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[1] Avista, *Our Commitment*, https://investor.Avistacorp.com/corporate-responsibility/our-commitment (last visited Jan. 9, 2021).
[2] Avista, *Corporate Sustainability Report 2021*, 6, https://investor.avistacorp.com/static-files/c8d35daf-8b46-4679-8952-ca40b6bfe27f#page=5.
[3] *Id.*

to comply with the CCA program, we are concerned that the steep decline in no-cost allowances for gas utilities in the first compliance period does not account for impacts on low-income customers.[4] A significant proportion of our customers are economically disadvantaged and live in rural areas. If gas rates increase, they may be forced to switch to more heavily polluting resources—such as wood, wood pellets, propane, or kerosene—that the CCA program would not capture. Avista urges Ecology to adjust the trajectory to minimize impacts on these customers while maximizing emissions reductions over time.

Gas utilities like Avista operate with significantly more restrictions than other private sector actors, and rightly so, given our unique position in providing essential public services. Notably, gas utilities have a statutory duties to serve *all* customers who request our services while also ensuring that rates charged for these services are "just, fair, reasonable and sufficient"—a determination made by the Washington Utilities and Transportation Commission (WUTC).[5] Thus, gas utilities alone cannot control customer demand, which is affected by weather, and the emissions that result from such demand. Furthermore, Avista does not have unilateral discretion over customer rates or how to invest those rates in clean energy projects; the WUTC must approve these kinds of decisions that also impact emissions.

The proposed annual 7% reduction in no-cost allowances in the Draft Rule starting in the first year of the program and continuing for each year until 2030 does not account for these unique statutory duties and limitations, or how emissions reductions in the gas sector will occur. RNG and hydrogen projects that substantially reduce gas emissions will take years to fully plan, design, and implement, subject to WUTC approval, but Avista expects the number of such projects to increase over time, just as once-emerging wind and solar projects have. Other options, such as electrification or energy efficiency measures, will take time to implement on a wide scale. Furthermore, when deciding whether to implement any emission-reducing solution, technological feasibility, project capacity, and cost will be crucial factors for all parties involved to consider. For these reasons, Avista expects to be a large net purchaser of allowances from day one of the program.

Avista therefore urges Ecology to increase the amount of no-cost allowances in the first compliance period in order to provide the time necessary for utilities to deploy additional renewable resources. Ecology can do so by causing the decline of no-cost allowances to be less steep in the first compliance period (2023-2026) and then ramping up the decline in the second compliance period (2027-2030) to meet Washington's statutory goal of achieving a 45% reduction in emissions below 1990 levels by 2030.[6] For the first year of the program in particular, Avista recommends that there be no reduction from the program baseline; that way, covered entities can focus on the mechanics of compliance.

Nothing in the Washington's statutes mandates that the no-cost allowances immediately decline as steeply as Ecology currently proposes. Section 9(2) of the CCA statute requires "*progressively* equivalent reductions year over year," which means that annual reductions should gradually ramp up; an alternative interpretation renders the word "progressively" superfluous.[7] The Merriam-Webster dictionary also defines "equivalent" as "like in signification or import."[8] Thus, this definition

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[4] WAC 173-446-240(2), https://ecology.wa.gov/DOE/files/ad/add4891c-0c4e-4253-a784-d02051c77633.pdf.
[5] RCW 80.28.010, 80.28.110.
[6] RCW 70A.45.030(1)(a)(ii).
[7] Climate Commitment Act, Sec. 9(2), https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5126-S2.SL.pdf?q=20220107163549.
[8] Merriam-Webster Dictionary, *equivalent*, https://www.merriam-webster.com/dictionary/equivalent (last visited Jan. 8, 2022).

does not necessitate that "equivalent" means the same numerical value in all contexts, and when qualified with the term "progressively", it indicates a ramping up of the numerical value from year to year.

A less steep decline in the first compliance period will also provide regulated entities and Ecology time to work out any unforeseen issues with a brand-new regulatory program that Ecology is being forced to promulgate at a rapid speed. In sharp contrast, it took California *six years* to design its cap-and-trade program before it opened its tracking system for allocation, auction distribution, and trading in 2012 and imposed compliance obligations in 2013.[9] It would be reasonable and prudent for Ecology to adjust the trajectory to avoid the potential for near-term negative customer impacts from the *concurrent* imposition of compliance obligations and development of administrative mechanisms.

We hope that Ecology will recognize these concerns and adjust the no-cost allowance decline accordingly to maximize protection for low-income customers and trackable emissions reductions.

Consulting with the WUTC

Under the Washington's statutes, Ecology and the WUTC are charged with implementation and oversight of discrete but equally important program components. On one hand, Ecology distributes allowance and ensures covered entities submit allowances to meet their compliance obligations. On the other, the WUTC sets the rates necessary for compliance and oversees and approves how utilities distribute customer benefits.[10]

In order to appropriately price CCA compliance costs into rate recovery and approve corresponding rebates, the WUTC will need to know the auction prices and price ceiling for allowances. This information is important for customers to have as well, especially for low-income customers that need to know in advance what charges and energy rebates they will receive *and when*—as long lag times between the two would disproportionately strain low-income households.

Avista notes that throughout the program, utilities will have to price compliance costs into their rates before an auction occurs, as the price of allowances may fluctuate between auctions. Given this inherent market uncertainty in the program, both utilities and the WUTC will have to determine prices for ratepayers based on incomplete information and may have to continually adjust rates as the program plays out. In this regard, the more Ecology can do to send clear market signals and encourage predictable auction prices in advance of auctions, the better.

Additionally, for Avista, the WUTC and Idaho Public Utilities Commission (PUC) will first need to reach an agreement on the cost allocation for resources acquired to comply with environmental regulation versus resources to meet system load obligations. The Idaho PUC will not allow costs

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[9] International Carbon Action Partnership, USA – California Cap-and-Trade Program, 1 (Nov. 17, 2021), https://icapcarbonaction.com/en/?option=com_etsmap&task=export&format=pdf&layout=list&systems%5B%5D=45. California Assembly Bill 32, which authorized California's cap-and-trade program, passed in 2006. California Air Resources Board, *AB 32 Global Warming Solutions Act of 2006,* https://ww2.arb.ca.gov/resources/fact-sheets/ab-32-global-warming-solutions-act-2006 (last visited Jan. 9, 2022).

[10] RCW 80.01.040(3) ("The utilities and transportation commission shall . . . [r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.").

incurred for providing services to Washington customers, or to comply with the CCA, to be paid for by Idaho customers.

Thus, it is for good reason that the CCA statute directs Ecology to consult with the WUTC and the Department of Commerce in developing its allowance allocation rules for electric and gas utilities.[11] It would be helpful for Ecology to make clear how it has already coordinated, or plans to coordinate, with the WUTC and make public any key coordination points.

Preserving Price Ceiling Unit Sales

In the current Draft Rule, Ecology writes that in order to receive price ceiling unit sales, a covered entity "must also demonstrate to Ecology's satisfaction that it tried, but was unable to acquire sufficient compliance instruments to meet its compliance obligations for the immediately upcoming compliance deadline."[12] Ecology provides no guidance on what would constitute a "satisfactory demonstration." For example, if Washington experiences an unexpectedly cold winter that results in Avista being short of allowances due to unanticipated heating needs, could Ecology refuse to grant price ceiling units because it determines that Avista should have banked more allowances in previous compliance periods?

Furthermore, this requirement is outside the bounds of the CCA statute. Section 18 of the CCA statute does not grant Ecology the authority to limit price ceiling units in this way. Rather, the statute directly states, "In the event that no allowances remain in the allowance price containment reserve, the department *must* issue the number of price ceiling units for sale *sufficient to provide cost protection for facilities* as established under subsection (1) of this section."[13] The only caveat to this edict is that "[p]urchases must be limited to entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts for the next compliance period and these entities may only purchase what they need to meet their compliance obligation for the current compliance period."[14] Ecology should delete the undue discretion it has proposed itself in WAC 173-446-385(4) and (6).[15]

Accounting for RNG Consistent with Other Programs

Ecology should clarify in the definition of "biomass-derived fuel" at WAC 173-446-020(1)(o) that fuel such as RNG purchased to comply with the CCA program does not have to be tracked to a specific end-user where the RNG is delivered.[16]

RNG, like renewable electricity, is purchased on behalf of customers, but it is impossible to track the actual molecules to a specific location upon delivery. Even so, the addition of RNG to the pipeline systems displaces fossil-based natural gas, thereby reducing greenhouse gas emissions. Notably, RNG can be sourced in- or out-of-state to maximize RNG development and utilization.

Clarifying that Avista can use RNG purchased on behalf of customers in Washington to help reduce its compliance obligation aligns with the CCA statute, which states the CCA program shall not cover "[c]arbon dioxide emissions from the combustion of biomass or biofuels."[17] This would also align with other cap-and-trade programs, such as the recently finalized Climate Commitment Program in

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[11] Climate Commitment Act, Sec. 14(2)(b), Sec. 15(1)(b).
[12] WAC 173-446-385.
[13] Climate Commitment Act, Sec. 18(2) (emphasis added).
[14] *Id.*
[15] *See* redline in Attachment 1.
[16] *See* redline in Attachment 2.
[17] Climate Commitment Act, Sec. 10(7).

Oregon, which regulates many of the same utilities that Washington's CCA program will affect, including Avista, Cascade, and NW Natural.[18]

Allocating No-Cost Allowances for Electric Utilities Consistent with the CCA

Avista appreciates that Ecology has suggested flexible options to allocate allowances. However, the expression of these options in rule should reflect the requirement in the CCA, Sec 14(2)(b), regarding, in Avista's case, approval by the WUTC of any methodology. Avista proposes Ecology hold a joint workshop with the impacted utilities, the WUTC, and the Department of Commerce to discuss possible options to forecast emissions allowances.

Whatever methods Ecology does decide to use for utility-specific forecasts, subsequent allowance allocations must appropriately account for the cost burden resulting from electric utilities' inclusion in the first compliance period.[19] Based on the current Draft Rule, Ecology's cost burden formula only considers total emissions and does not make any attempt to quantity the administrative costs from utilities participating in the program.

This runs counter to the statutory definition of cost burden under the statute, which requires consideration of administrative costs. Specifically, the CCA statute defines "cost burden" as "the impact on rates or charges to customers of electric utilities in Washington state for the incremental cost of electricity service to serve load due to the compliance cost for greenhouse gas emissions caused by the program," and it clarifies that "[c]ost burden includes administrative costs from the utility's participation in the program."[20] Even if Ecology perfectly predicts the future energy mix and related allowance needs, utilities will still face compliance costs for which they would have to seek rate recovery from customers. Electric utilities could pay for these administrative costs by auctioning off no-cost allowances for the benefit of ratepayers.[21]

Consistent with the statute's direction to mitigate the cost burden on customers, Ecology should ensure forecasts and its cost burden formula fully mitigate the costs of CCA compliance that would otherwise be passed onto customers. Doing so will not lessen emissions reductions in the electric sector, as the Clean Energy Transformation Act (CETA) requires this sector to produce carbon-neutral electricity by 2030 and electricity 100% free from greenhouse gas emissions by 2045.

In light of CETA's coverage of the electricity sector and the CCA's instructions to mitigate cost burdens, Ecology should also add a provision to the Draft Rule that grants electric utilities additional no-cost allowances from the emissions containment reserve in the unforeseen circumstance that Ecology's forecast does not align with the electric utility's actual generation mix during the compliance period.

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[18] Oregon Department of Environmental Quality, *Oregon Environmental Quality Commission Special Meeting*, 313–314 (Dec. 16, 2021), https://www.oregon.gov/deq/EQCdocs/121621_ItemA.pdf ("The biomethane can be sourced from projects anywhere in North America, as long as the biomethane is injected into a common carrier pipeline network. The natural gas utility can claim the same volume of biomethane via displacement, also known as book and claim, without tracking the gas to a specific end-user.").
[19] Climate Commitment Act, Sec. 14(2)(b).
[20] *Id.* at Sec. 2(21).
[21] *See* WAC 173-446-230(5) (allowing for no-cost allowances to be auctioned for the benefit of ratepayers).

Maintaining Confidentiality in Markets

Ecology should petition the Washington legislature to **not** make public the volume of allowance in entity holding accounts, as the CCA statute and the Draft Rule currently require.[22] Confidentiality in market positions is critical to a well-functioning allowance market and making this information public risks the integrity of the market. Posting this information publicly also contradicts the CCA statute's instructions that Ecology's rules "minimize the potential for market manipulation." [23] Moreover, Avista is concerned that the market integrity risk associated with that current language could create an impediment to linking Washington's program with similar programs in other jurisdictions.

Additional Recommendations

Avista supports the Joint Comments submitted today by Avista, PacifiCorp, the Public Generating Pool, and Puget Sound Energy. In recognition of the enormity of the work facing Ecology, Avista is not reiterating all of those comments here. However, Avista highlights and provides additional context for the following joint recommendations:

- **Program baseline.** The methodology for establishing the subtotal baselines should attempt to align with the point at which a compliance obligation is applied and with the methodology that determines compliance with the requirements of the cap-and-invest program. Additionally, Avista recommends that Ecology make the source data and methods it used to calculate the baseline as transparent as possible. Ecology should also make this information available as soon as possible so that the public can review it for quality control purposes.

- **Linking to other programs.** Avista encourages Ecology to ensure it adopts a CCA program that is consistent with the California Air Resources Board's cap-and-trade program, including the adoption of similar price floor and price ceilings, price containment mechanisms, and relevant offset protocols. However, it is Avista's position that Ecology should also consider Washington's specific context, as program linkage will not occur immediately.

Conclusion

Avista appreciates the opportunity to raise these points and looks forward to continued dialogue throughout the rulemaking process. Should you have any questions, please reach out to me at bruce.howard@avistacorp.com.

Sincerely,

Bruce Howard
Senior Director of Environmental Affairs
Avista

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[22] Climate Commitment Act, Sec. 11(7)(b); WAC 173-446-150(4).
[23] *Id.* at Sec. 12(8).

Attachment 1

Proposed Redline of WAC 173-446-385

WAC 173-446-385 Price Ceiling Unit Sales

(1) Price ceiling unit sales shall only be held between the last Allowance Price Containment Reserve Sale before a compliance deadline and the compliance deadline itself.

(2) Price ceiling units shall be sold at the ceiling price.

(3) Price ceiling unit sales shall be held only if a covered entity or opt-in entity requests a price ceiling unit sale.

(4) In a request for a price ceiling unit sale, the covered entity or opt-in entity must provide an accounting to Ecology showing that it has insufficient compliance instruments to meet its compliance obligations for the next compliance deadline. ~~The covered entity or opt-in entity must also demonstrate to Ecology's satisfaction that it tried, but was unable to acquire sufficient compliance instruments to meet its compliance obligations for the immediately upcoming compliance deadline.~~

(5) Ecology shall review any requests and notify requesters of Ecology's response.

(6) If **a covered entity or opt-in entity provides an accounting to Ecology showing that it has insufficient compliance instruments to meet its compliance obligations for the next compliance deadline** ~~Ecology agrees to sell price ceiling units~~, Ecology shall instruct the financial services administrator to begin to accept cash payment for purchases from price ceiling sales no earlier than ten business days after the previous Reserve sale and to cease accepting payments no later than seven days thereafter.

(7) The financial services administrator will inform Ecology of the amounts of payments received from covered entities no later than one business day after it ceases to accept payments.

(8) After a sale, Ecology will transfer purchased price ceiling units directly to each purchaser's compliance account for retirement at the next compliance deadline.

Attachment 2

Proposed Redline of WAC 173-446-020(1)(o)

WAC 173-446-020(1)(o)

(o) "Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 percent lower GHG emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute. **This includes such fuel that is purchased to comply with Chapter 173-446 WAC and is not tracked to the specific end-user of where the fuel is delivered.**