January 26, 2022

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Department of Ecology
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Attention: Cooper Garbe
Rulemaking Lead
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Re: Rulemaking – Chapter 173-446 WAC, Climate Commitment Act Program

On January 5, 2022, the Washington Department of Ecology (Ecology) issued a second set of informal draft rules proposing a new Chapter 173-446 WAC (Climate Commitment Act Program) and solicited comments on the draft rules by January 26, 2022. Avista, PacifiCorp, the Public Generating Pool, and Puget Sound Energy (Joint Utilities) respectfully submit the following comments on these draft rules.

GENERAL COMMENTS

The Joint Utilities' comments are guided by important statutory direction within the Climate Commitment Act (CCA), as outlined below. The Joint Utilities urge the Department of Ecology to adhere to these statutory principles as the agency develops rules for a market-based program that will be deeply impactful to our businesses, the customers we serve, and more broadly the State of Washington.

- **Linkage:** There is clear statutory direction given to Ecology throughout the CCA to develop a cap-and-invest program that facilitates program linkage with other jurisdictions.[1] Ecology's development of the regulations should maximize the possibility of linking with other programs in the future. Ecology should look to the California Air Resources Board (CARB) in developing certain elements of the proposed rules so as not to jeopardize Washington's ability to link with California's program. In particular, the Joint Utilities recommend Ecology prioritize ensuring mechanisms like the price floor, price ceiling, price containment mechanisms, and offset protocols are of equivalent stringency to those used in CARB's cap-and-trade program. It is in our collective interests that a robust set of

[1] Climate Commitment Act, Sec. 8 (3), Sec. 12 (10), Sec. 16 (1), Sec. 24

rules be adopted that allows for Washington's program to link with external cap-and-trade programs in the future, like California's program.

- **Cost Burden:** Electric utilities are subject to the requirements of Washington's Clean Energy Transformation Act (CETA) which commits Washington to an electricity supply free of greenhouse gas emissions by 2045. In recognition of these existing requirements, lawmakers defined the term "cost burden" under the CCA as follows:

  > "… 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. Cost burden includes administrative costs from the utility's participation in the program."[2]

  The law also stipulates that all electric utilities subject to CETA are eligible for allowances, at no cost, "in order to mitigate the cost burden of the program on electricity customers."[3] Development and administration of the cap-and-invest program must therefore be cognizant of the statutory definition of cost burden under the CCA and ensure that electric utilities are allocated sufficient allowances to mitigate the cost burden of this particular program on our customers.

- **Consultation:** Given the inherently complicated nature of the electric sector, the CCA directs the Department of Ecology to consult with the Department of Commerce (Commerce) and the Washington Utilities and Transportation Commission (WUTC) on key elements of this program[4]. This consultation and partnership are essential to ensure program rules are developed in recognition of our unique position as regulated and essential public service providers. The Joint Utilities recommend regular and robust conversations occur between Ecology, Commerce, the WUTC, and electric utilities to ensure that all entities are working towards the same goal of reducing the electric sector's proportionate share of Washington's greenhouse gas emissions while maintaining affordable and reliable power.

SPECIFIC COMMENTS

1) Allocating No-Cost Allowances to Electric Utilities

a) *The allocation of allowances to electric utilities must be based on a forecast that is approved by a utility regulator or governing board, not a determination by Ecology, as required under the CCA.*

Ecology should narrow WAC 173-446-230(1) to more closely follow the statutory requirement that allowance allocations to electric utilities must be consistent with a

[2] Climate Commitment Act, Sec. 2 (21)
[3] Climate Commitment Act, Sec. 14 (1)
[4] Climate Commitment Act, Sec. 10 (1)(c), Sec. 14 (2)(a)

forecast "that is approved by the appropriate governing board or the utilities and transportation commission…"[5] rather than a determination by Ecology. Currently, the draft rule proposes that Ecology will consider three potential sources of information in an order of preference to "determine the resource mix that will be used by that electric utility…"[6] and allocate allowances accordingly.

The Joint Utilities appreciate Ecology's recognition in WAC 173-446-230(1)(b)(i)-(iii) that there likely is no one-size-fits-all approach for forecasting utility allowance needs and believes this flexibility can be maintained—while more closely aligning the regulation with the statute—by deleting the text of 173-446-230(1)(b) and adding the approaches in (b)(i)-(iii) as potentially qualifying forecasts under 173-446-230(1)(a).

Further, the Joint Utilities recommend Ecology conduct a consultative process with the WUTC and Commerce to adopt an allocation methodology that may consider the utility's Clean Energy Implementation Plan (CEIP) required under CETA and its integrated resource planning (IRP) processes, but does not rely on them solely, nor in a ranked order.

The statute requires Ecology to allocate no-cost allowances to electric utilities to sufficiently mitigate the cost burden of the program on Washington customers. The rules and methodologies adopted for the allocation of allowances will have material bearing on the extent to which the cost burden of the cap-and-invest program is sufficiently mitigated, and therefore should be done in consultation with these agencies.

Discrete costs attributable to the cap-and-invest program may include, but are not limited to:

1) the cost of purchasing allowances for emissions associated with generation that serves Washington retail customers, where an electric utility is also considered a covered entity;

2) the cost of increased market prices due to the application of compliance obligations on the use of GHG emitting resources; and

3) administrative costs from the utility's participation in the program, as either a covered entity or general market participant.

Because there is significant uncertainty regarding these costs and how they will bear out in the program, the Joint Utilities recommend this collaborative approach. Furthermore, because the CEIPs and IRPs are planning documents intended to guide utilities' compliance with CETA—not the CCA—these documents do not contain sufficient detail to reflect the forecasted costs associated with the cap-and-invest program outlined above.

[5] Climate Commitment Act, Sec. 14 (2)(b)
[6] WAC 173-446-230(1)(b)

Additional uncertainties and concerns with relying upon the CEIP and IRP for the development of the cost burden forecast are discussed in further detail below.

Timing

The four-year CEIPs utilities file to demonstrate progress in meeting the compliance obligations of CETA do not align with the CCA's four-year compliance periods.

2022 CEIP – Covered Years	**CCA First Compliance Period – Covered Years**
2022	2023
2023	2024
2024	2025
2025	2026

Ecology will be adopting an allowance allocation schedule for first compliance period in Oct. 2022

Assumptions

Utility CEIPs and IRPs are medium and long-term planning documents and do not reflect detailed operational considerations that will potentially have cost implications under the cap-and-invest program. This macroscopic lens is a snapshot in time and may not capture the moving picture of utility operations, market conditions, increased regional penetration of renewables, and other factors that impact costs to serve Washington customers.

System Variability

CEIPs are informed by utilities' historical performance under median water conditions and resource capability, which does not account for future-facing and uncertain water conditions. For example, if an actual water year comes in below the water conditions forecast in a utility's CEIP, the utility may need to rely on different resources that may have emissions. As these different resources would not be accounted for in their static allowance allocation, this could create a net cost for customers in complying with the CCA. CEIPs and IRPs do not account for all these balancing market purchases and sales, which are likely to create compliance obligations and pass-through compliance costs under the first jurisdictional deliverer regulatory framework.

b) *WAC 173-446-230(1) should include a provision addressing potential shortfalls between forecasted electricity demand and actual electricity generation, including imports necessary to balance load.*

Consistent with the CCA's direction to mitigate the cost burden on customers of utilities already subject to CETA,[7] Ecology should also add a provision to the draft rule that grants electric utilities additional no-cost allowances from the allowance price containment reserve in order to account for unforeseen circumstances. These circumstances include, but are not limited to, unanticipated load growth from electrification, or other elements of the approved utility forecast for allowances that does not align with the electric utility's actual generation mix during the compliance period. Doing so would achieve the objectives of the CCA without lessening emissions reductions from the electric sector, as CETA requires this sector to produce electricity 100% carbon neutral by 2030 and 100% free from greenhouse gas emissions by 2045.

2) Price Ceiling Units

Ecology should remove agency discretion over whether to sell price ceiling units because such discretion conflicts with the CCA statute.

In the current iteration of draft rules, Ecology writes that 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"[8] to receive price ceiling units. This requirement exceeds Ecology's authority and for the following reasons the Joint Utilities strongly recommend that it be removed from draft WAC 173-446-385 (4) and (6).

- First, 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."[9]
- Second, the requirement creates untenable uncertainty for utilities that must meet customer demand and reliably provide power. Ecology provides no guidance on what would constitute a "satisfactory demonstration" and the requirement doesn't appear to contemplate unforeseen utility operating conditions. What if an unexpected issue occurred at a renewable generation plant or key transmission lines such that a utility required more GHG emitting generation than expected to meet demand?
- Third, such a requirement intrudes on the purview of the Joint Utilities' respective regulatory and governing bodies by effectively creating a duplicative review of utilities' resource decisions. Our economic regulators and governing bodies routinely review utility operations for prudence, and such processes are governed by rigorous regulatory regimes that safeguard against mismanagement.

[7] Climate Commitment Act, Sec. 14(2)(b)

[8] WAC 173-446-385

[9] Climate Commitment Act, Sec. 18(2) (emphasis added)

- Finally, such discretion would create market uncertainty for all and as such could also create a barrier to linkage with other jurisdictions in direct opposition to the CCA's mandate in Section 12(10) to design allowance auctions to allow linkage with other jurisdictions, "to the maximum extent practicable."

3) Allowance Adjustments

Ecology should establish adjustment factors in rule and conduct a public rulemaking process before making program cap adjustments different from those previously established by rule.

Consistent with California, market participants should be able to rely on a set allowance supply as established in rule, based on limited adjustment factors. Ecology, however, gives itself broad discretion in WAC 173-446-250 to adjust the program allowance budget without a public process. This would create undue and untenable uncertainty in the market and higher energy costs for customers to account for the additional risk.

The statute provides authority for Ecology to conduct a program evaluation and adjustments to annual program caps in 2027 and 2035. The rules should therefore require Ecology to conduct public processes in 2027 and 2035 as part of its evaluation of the program performance and before submitting its report to the legislature. Any recommendation for adjustments to the program caps should be discussed within that public process and included in the report to the legislature. This will ensure that covered entities have advance knowledge of any pending reductions in the supply of allowances for the second and third compliance periods.

4) Initial Auction

Ecology should consider conducting a single initial auction, prior to the first compliance obligation and after the initial allocation of no-cost allowances, to establish a price signal for utility planning and minimize customer impacts from the initial program implementation.

The Joint Utilities recommend Ecology hold an auction *before* compliance obligations begin and *after* the initial allocation of no-cost allowances, so covered entities can plan according to the price signal they receive. To appropriately price CCA compliance costs into rate recovery and approve corresponding rebates for our customers, utilities and their regulators (either the WUTC or, for consumer-owned utilities, their governing bodies) need to understand market prices for allowances as well as price impacts on the electricity wholesale market. Without the cost information provided by an auction, utilities may need to charge customers the ceiling price as the most prudent course (subject to WUTC or governing body approval), considering potential weather variability, the uncertainty of the first year of the program, and other factors including the sharp decline proposed for the allowance budget.

5) Calculation of the Electric Sector Baseline

Ecology's proposed data source for imported electricity in the baseline does not align with the point of regulation.

Establishing an accurate baseline for the cap-and-invest program is critical to determine the magnitude of emissions reductions necessary to meet the state's 2030 emissions limit, which then defines the annual program allowance budgets set by Ecology.[10] Further, the integrity of the baseline is important for the ability to link with other jurisdictions. The proposed approach to establishing a baseline for imported electricity is inconsistent with the first jurisdictional deliverer point of regulation under the CCA and, therefore, is not an accurate representation of the baseline.

In the draft rules, Ecology proposes to use distinct methodologies for establishing subtotal baselines for facilities, suppliers, and electric power entities that would meet the CCA's applicability requirements based on their covered emissions from 2015 through 2019. This approach distinguishes between in-state electric generating facilities, which are included under the "Facilities that are not EITEs" subtotal, and electricity importers ("Electric power entities" subtotal). While the Joint Utilities understand the methodological rationale for this bifurcation, we are concerned that Ecology's approach for calculating the "electric power entities" subtotal baseline lacks rigor, contradicts the first jurisdictional deliverer approach, and bears the risk of misrepresenting emissions associated with electricity imports.

According to WAC 173-446-200(2)(f), Ecology proposes to use fuel mix disclosure reports generated by the Department of Commerce to identify and catalog all contracted power and methods from WAC 173-444-040 to estimate greenhouse gas (GHG) emissions. Issues with this approach include:

- The fuel mix disclosure reports do not "identify and catalog all contracted power" as the draft rules appear to anticipate.
- Fuel mix disclosure reports are only provided by electric utilities serving retail load in the state, not electricity importers who are otherwise treated as first jurisdictional deliverers under the CCA.
- Fuel mix disclosure reports attribute certain emissions based on the presence or absence of renewable energy certificates and attribute actual emissions reductions to renewable energy instruments.

[10] RCW 70A.65.070(2): "The annual allowance budgets must be set to achieve the share of reductions by covered entities necessary to achieve the 2030, 2040, and 2050 statewide emissions limits established in RCW 70A.45.020, based on data reported to the department under chapter 70A.15 RCW or provided as required by this chapter...The department must adopt annual allowance budgets for the program on a calendar year basis that provide for progressively equivalent reductions year over year...."

- The fuel mix disclosure enabling statute provides a statement of legislative intent that "the fuel characteristics disclosed under this chapter represent reasonable approximations that are suitable only for informational or disclosure purposes" (RCW 19.29A.130). This information was never intended to serve as the methodological basis for a GHG accounting, pricing, or cap-and-trade system.

The Joint Utilities believe 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. Failure to align the baseline and compliance assessment methodology will result in an inaccurate picture of the state's historical emissions and impact the state's ability to accurately represent progress toward emission reduction targets. The Joint Utilities suggest that, instead of using the fuel mix disclosure reports, Ecology could acquire better-aligned baseline data by:

- Contracting with a third-party to utilize existing Open Access Technology International (OATI) tag data to provide the net quantity of electricity imported into balancing authority areas located entirely inside Washington for each of the 2015 through 2019 calendar years. This data could be aggregated by first point of receipt, rather than by individual importer. If these imports can be matched to particular resources, they can be given a site-specific emissions rate; for all others, Ecology could use the CARB default emissions factor. The Joint Utilities are interested in working with Ecology to develop the mechanics of this analysis through collaboration with Commerce and the WUTC.
- Calculating emissions associated with Bonneville Power Administration (BPA) sales to its Washington customers using the volume of these sales multiplied by BPA's asset controlling supplier emissions rate for the given year, as assigned by CARB.
- Calculating emissions associated with imports for multijurisdictional utilities in accordance with the methodology established WAC 173-441 (GHG Reporting Rule), or in accordance with the methodology established in WAC 480-109-300 used to report emissions to the WUTC.[11]

6) Emission Factors

Ecology should use emissions data based on actual and aligned unspecified emissions rates for use in cost burden calculations.

[11] At the time of these comments, Ecology has not issued final rules for WAC 173-441. PacifiCorp proposed certain amendments to Ecology's proposed methodology for reporting emissions for multijurisdictional utilities to be consistent with how resources are cost-allocated to Washington customers. If Ecology adopts PacifiCorp's proposed changes, WAC 173-441 can be used for the purpose of calculating multijurisdictional imported emissions for the purposes of establishing the electric sector baseline.

In WAC 173-446-230(c), Ecology proposes using generic emissions factors to apply to a utility's projected generation mix to determine the emissions associated with that mix. Where specific resources are known, the Joint Utilities recommend that Ecology use site-specific emissions factors. And where resources are unspecified, the rules should align with the CARB unspecified rate to avoid double counting of transmission losses and support consistency across the market. Ecology should also consider periodically updating the unspecified rate as the regional electric grid continues to decarbonize.

7) Banking of Allowances

The Joint Utilities support Ecology's approach for banking of compliance instruments in WAC 173-446-400.

Banking of allowances will be a key tool in the toolbox of utilities for mitigating cost burden for Washington customers and managing uncertainty and future variability in the cap-and-invest program.

8) Treatment of Voluntary Programs

The Voluntary Renewable Electricity Reserve Account should be sufficiently small and should be reduced over time as the underlying grid resource mix contains higher penetrations of renewable and non-emitting generation.

The Joint Utilities support Ecology's proposal in WAC 173-446-230 (2) to set aside 1/3 of one percent (.33%) of total program budget for the Voluntary Renewable Electricity Reserve account. Although the statute requires a Voluntary Renewable Electricity Reserve Account be established from which allowances "*may be retired*", the Joint Utilities do not agree voluntary renewable electricity programs can be directly tied to emissions reductions, nor do renewable energy certificates equate to quantifiable and verifiable emissions reductions. The voluntary renewable electricity set-aside should be sufficiently small and should be reduced over time as the underlying grid resource mix contains higher penetrations of renewable and non-emitting generation.

Allowances deposited in the Voluntary Renewable Electricity Reserve Account should be allocated from the statewide allowance budget and should not diminish the number of allowances allocated to electric utilities or the ability of electric utilities to receive sufficient allowances to mitigate the cost impacts of the program on electric utility customers.

CONCLUSION

In summary, as Ecology develops rules for the CCA program that impact electric utility operations and our customers, the agency must be guided by statutory direction around linkage, cost burden, and consultation with utility regulators. The Joint Utilities are engaged together in a highly collaborative process and are committed to investing the resources needed to work with Ecology to ensure the electric sector meets its proportionate share of emissions reduction objectives. Despite the tight deadline in which Ecology and covered entities must implement this program, the Joint Utilities believe additional collaboration and consultation between Ecology, the state's utilities, and regulators is necessary to design a framework that achieves the program goals, aligns with statutory direction, and displays stewardship of Washington utility customers' dollars.

In these comments, the Joint Utilities have made substantive recommendations on key program elements including establishing the electric sector baseline and allocation of allowances to electric utilities, and we look forward to discussing further with you.

Thank you for the opportunity to provide comment. We look forward to continued dialogue with Ecology as the rulemaking progresses.

Sincerely,

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