



January 26, 2022

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

**RE: Draft Cap-and-Invest program rules (Chapter 173-446 WAC)**

Puget Sound Energy, Inc. (PSE) submits these comments on the Draft Rule to aid the Washington State Department of Ecology (Ecology) in developing regulations that effectively and equitably implement the Climate Commitment Act (CCA). PSE is Washington State's oldest and largest investor-owned energy utility, serving over 1.1 million electric and over 850,000 natural gas customers with safe and reliable energy services. In January 2021, PSE announced an aspirational goal to be a Beyond Net Zero Carbon company by 2045.<sup>1</sup> In alignment with our Beyond Net Zero aspirations, PSE was proud to support the CCA and is preparing in earnest for the implementation of this multi-sector market approach to reducing carbon emissions.

This letter specifically addresses Ecology's most recent Draft Rule and information raised by Ecology during stakeholder meetings held on December 16, 2021 and January 11, 2022. In preparing these comments, PSE also proactively engaged with other gas and electric utilities where possible to identify and resolve key issues that could negatively impact customers and/or hamper efficient and effective implementation of the cap-and-invest program. As such, we are also submitting joint comments with the other electric utilities. PSE appreciates Ecology's continued engagement with stakeholders and consideration of PSE's prior individual and joint comments.<sup>2</sup>

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<sup>1</sup> Puget Sound Energy, *Pathway to Beyond Net Zero Carbon by 2045*, (Jan. 2021), available for download at <https://www.pse.com/en/press-release/details/pse-sets-beyond-net-zero-carbon-goal>.

<sup>2</sup> PSE's prior comments, as well as the Joint Comments submitted today, are attached as Attachment 7 for ease of reference.

## RESIDENTIAL CUSTOMER PROTECTIONS

### **1. The schedule for reducing no-cost allowances for gas utilities should be adjusted to minimize impacts felt by customers during the initial implementation period.**

Ecology should revise WAC 173-446-240(2) so that no-cost allowances provided to gas utilities are reduced less in the first compliance period (2023-2036) and more in the second compliance period (2027-2030). Starting the program with more no-cost allowances for gas utilities would be consistent with the market approach by minimizing program impacts on gas customers and providing gas utilities time needed to transition to low-carbon options.

Despite best efforts by the Washington Utilities and Transportation Commission (WUTC) and gas utilities, there likely will be greater lag times between the imposition of customer costs and distribution of customer rebates, as well as other inefficiencies, at the outset of the program. Additionally, PSE's allowance need is likely to be greater in the first compliance period than the second compliance period, because of the time it will take for PSE to get approval for and implement emission-reducing measures.<sup>3</sup>

The sharp decline in no-cost allowances during the first year especially, and initial compliance period generally, will exacerbate the impact of initial inefficiencies on customers—and will be felt *most especially* by low-income households. PSE and other gas utilities provide essential public services and are under existing separate regulations to ensure reliability and affordability.<sup>4</sup> Most of our customers are residential households that rely on our services to meet their daily energy needs, even and especially during the coldest weather events.<sup>5</sup> Thus, it is critically important that Ecology revisit the rate of decline of no-cost allowances early in the program to minimize customer impacts.<sup>6</sup>

### **2. Ecology must remove discretion over whether to sell price ceiling units needed to provide cost protection for customers.**

PSE strongly recommends that the Ecology discretion over price ceiling units be removed from WAC 173-446-385(4) and (6).<sup>7</sup> Under the Draft Rule, a covered entity “must 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.”<sup>8</sup> This requirement exceeds Ecology’s authority under the CCA, creates untenable uncertainty for

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<sup>3</sup> PSE 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 give us the ability to impact emissions. We believe in the ability to decarbonize our gas system, but we need sufficient time to innovate and implement necessary investments.

<sup>4</sup> Importantly, gas utilities have a statutory duty 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 WUTC. See RCW 80.28.010, 80.28.110.

<sup>5</sup> Weather challenges will only grow in the future, as climate change causes more extreme weather events that affect Washington.

<sup>6</sup> PSE further notes that the proposed emission reduction obligation is not proportionate to the percentage of greenhouse gas emissions from the natural gas sector.

<sup>7</sup> See Attachment 4.

<sup>8</sup> WAC 173-446-385.

utilities, intrudes on duties executed by the WUTC, and creates barriers to linkage in conflict with the intent of the CCA.

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.”<sup>9</sup> This is an unambiguous mandate.

Second, the discretion afforded to Ecology in the Draft Rule creates untenable uncertainty for gas utilities that must meet customer demand and electric utilities that must reliably provide power. Ecology provides no guidance on what would constitute a “satisfactory demonstration.” For example, if Washington experiences an unexpectedly cold winter that results in any utility being short of allowances due to unanticipated heating needs, could Ecology refuse to grant price ceiling units because it determines that an entity should have banked more allowances in previous compliance periods? Or what if an unexpected issue occurred at a renewable generation plant or key transmission lines such that a utility required more fossil fuel generation than expected to meet demand?

Third, the proposed Ecology discretion intrudes on the purview of the WUTC by effectively creating a duplicative review of utilities’ resource decisions. The WUTC routinely reviews utility operations for prudence, and such processes are governed by rigorous regulatory regimes. If a utility is found to be imprudent, the WUTC can issue remedies and/or disallowances. Ecology need not create a duplicative prudence review, because the statutes implemented by the WUTC already safeguard against mismanagement.

Finally, any Ecology discretion over price ceiling units would create market uncertainty for all and as such would 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. An allowance auction should be held before compliance obligations begin to minimize customer impacts from initial program implementation.**

Ecology should hold an auction *before* compliance obligations begin, so that covered entities can plan according to the price signal they receive. In order to appropriately price CCA compliance costs into rate recovery and approve corresponding rebates for our customers, utilities and the WUTC need to understand market prices. Without the cost information provided by an auction, utilities may need to charge customers rates based on the ceiling price as the most prudent course subject to WUTC approval, considering potential weather variability, the uncertainty of the first year of the program, and the first year’s steep decline in free allowances.

**4. Ecology’s rules should ensure the WUTC oversee compliance cost collections and the distribution of any benefits, including revenue from the free allowance sales for investor-owned utilities.**

Under 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 allowances and ensures covered entities submit allowances to meet their compliance

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<sup>9</sup> Climate Commitment Act, Sec. 18(2) (emphasis added).

obligations. On the other hand, the WUTC sets the rates necessary for compliance and oversees and approves how investor-owned utilities distribute customer benefits.<sup>10</sup> Because the WUTC has knowledge of existing billing tariffs, utility billing infrastructure and capabilities, and low-income customer rate exposure, it is well-positioned to approve collection of greenhouse gas allowance costs and oversee distribution of the benefits from the program, including any revenue from the sale of free allowances, consistent with CCA objectives.<sup>11</sup> Regarding CCA Sections 14 and 15, it is imperative that Ecology's rules recognize that the WUTC will determine customer rate impacts and how to best mitigate them.<sup>12</sup>

To properly coordinate on their different regulatory areas and ensure smooth program implementation while respecting their distinct jurisdictions, it is of the utmost importance that Ecology and the WUTC commit to regular meetings between staff and policymakers of each agency. PSE would be happy to participate as appropriate in any joint meetings to help ensure that our compliance planning and efforts meet both the statutory and regulatory requirements of the program.

### **GAS UTILITY CONSIDERATIONS**

- 1. WAC 173-446-020(1)(o) should expressly state that RNG purchased to comply with the CCA is treated like a Renewable Energy Credit and does not have to be tracked by molecule to specific end-users.**

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 the specific end-user where the RNG is delivered. WAC 173-446-040(2)(a)(i) exempts carbon dioxide emissions from the combustion of biomass or biofuels from being considered covered emissions under the cap. Clarifying that exempted biomass or biofuels do not have to be tracked by molecule to specific end-users would be consistent with the CCA and a proven approach to spurring renewable fuel growth.<sup>13</sup>

The recommended clarification would be squarely within the mandates of the CCA. The CCA expressly states that the CCA program shall not cover "[c]arbon dioxide emissions from the combustion of biomass or biofuels."<sup>14</sup> Clarifying that covered entities can use RNG purchased on behalf of Washington state customers to help meet their compliance obligation aligns with this goal without specific tracking to the end-user by molecule.<sup>15</sup> This 'book and claim' concept is well accepted in environmental markets and is a proven and effective approach to displace fossil fuel through growth of renewable fuel. RNG, like renewable electricity, is purchased on behalf of customers, but it is not practical to track the actual molecules to a specific location upon delivery.

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<sup>10</sup> 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.").

<sup>11</sup> See, e.g., Climate Commitment Act, Sec. 14(4).

<sup>12</sup> See RCW 80.01.040(3).

<sup>13</sup> See Attachment 5.

<sup>14</sup> Climate Commitment Act, Sec. 10(7).

<sup>15</sup> It would be consistent with the statute's intent to likewise account for the associated life-cycle carbon emission reductions if a utility blends RNG or hydrogen with natural gas.

Even so, similar to how Washington's renewable portfolio standard works for electricity, the addition of RNG to the interstate pipeline system displaces fossil-based natural gas—thereby reducing greenhouse gas emissions.

## **ELECTRIC UTILITY CONSIDERATIONS**

### **1. The allocation of allowances to electric utilities must be based on a forecast that is approved by the WUTC, not a determination by Ecology.**

Ecology should narrow WAC 173-446-230(1) to more closely follow the statutory mandate that allowance allocations to electric utilities must be consistent with a forecast “that is approved by the appropriate governing board or the utilities and transportation commission....”<sup>16</sup> Currently, the Draft Rule proposes that Ecology will consider three potential sources of information to “determine the resource mix that will be used by that electric utility...” and allocate allowances accordingly.<sup>17</sup> The CCA does not authorize Ecology to make such a determination; otherwise, it would create significant additional administrative burdens for Ecology *and* duplicate expertise and duties already executed by the WUTC.

PSE appreciates 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). PSE has attached a proposed redline of WAC 173-446-230(1) for Ecology's consideration.<sup>18</sup>

### **2. Ecology should use facility-specific emission factors to prevent allowances from being issued for emissions that do not actually occur.**

PSE recommends that Ecology use emission factors specific to the particular facilities that contribute to the projected generation mix. Ecology currently proposes to use a generic, unspecified emission factor for natural gas generation,<sup>19</sup> but specific emission factors are available for electric generating units. In fact, PSE uses specific and separate emission factors to track emissions from its simple cycle gas turbines and combined cycle combustion turbines (CCCTs). CCCTs are significantly more efficient and therefore produce fewer greenhouse gas emissions per unit of energy. By utilizing emission factors that more accurately reflect the emissions from specific kinds of natural gas generation, the no-cost allowance allocation to electric utilities will more accurately reflect actual emissions and thus will ensure the maximum possible emission reductions.

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<sup>16</sup> Climate Commitment Act, Sec. 14(2)(b).

<sup>17</sup> WAC 173-446-230(1)(b).

<sup>18</sup> See Attachment 6.

<sup>19</sup> WAC 173-446-230(1)(c)(i).

**3. WAC 173-446-230(1) should include a provision addressing potential shortfalls between forecasted electricity demand and actual electricity generation.**

Consistent with the CCA’s direction to mitigate the cost burden on customers of utilities already subject to Clean Energy Transformation Act (CETA),<sup>20</sup> Ecology should add a provision to the Draft Rule that grants electric utilities additional no-cost allowances from the allowance price containment reserve in the unforeseen circumstance that the approved utility forecast for free allowances does not match with electric utility’s actual generation mix during the compliance period.

Currently, as illustrated in Table 1, below, the methodologies for determining baselines, forecasts for the determination of free allowances, and compliance are inconsistent. PSE is concerned that these inconsistencies may lead to an under- or over-estimation of emissions. Including a provision to address potential shortfalls between forecasted and actual electricity generation would achieve the objectives of the CCA—without lessening emissions reductions from the electric sector<sup>21</sup>—and address any unintended consequences resulting from inconsistencies in Ecology’s baseline and compliance methodologies.

PSE - Historic		Baseline (Ecology Calculated)	Forecast (Proposed)	Compliance (WAC 173-441)	
<i>Owned Resources (In-State)</i>	Uses facility level data reported in eGGRT	Uses a "load-based" approach, emissions calculated based on emissions profile of power sources that deliver electricity to Washington. Uses Commerce Fuel Mix profiles. Emission factors and underlying methodology are not made available to the public.	Cost Burden Allowances = Forecasted Generation (by resource type) x Generic EF <sub>Resource</sub> The emission factor for natural gas and coal are TBD; CETA-identified renewable and non-emitting, and coal transition power is zero; Unspecified power based is 0.437 tonne CO <sub>2</sub> e/MWh.	<i>Owned Resources (In-State)</i>	Uses facility level data reported in eGGRT
<i>Specified (Firm Contracts, Market Firm)</i>	Uses CETA/WUTC Methodology (Firm Deliveries <sub>MWh</sub> X Facility Calculated EF)			<i>Specified</i>	For specified sources, uses facility specific EF for delivered electricity (by category). Ecology will define facility EFs
<i>Unspecified Market</i>	Uses CETA/WUTC Methodology (Net Market MWh to Serve Load x 0.437 tonne CO <sub>2</sub> /MWh)			<i>Unspecified</i>	For unspecified sources, uses Ecology defined EF for delivered electricity (by category). EF=0.437 tonne CO <sub>2</sub> e/MWh

Notes:

EF = Emission Factor

eGGRT = Electronic Greenhouse Gas Reporting Tool (EPA)

<sup>20</sup> Climate Commitment Act, Sec. 14(2)(b).

<sup>21</sup> CETA requires this sector to produce electricity 100% carbon neutral by 2030 and 100% carbon free by 2045.

## PROGRAM MECHANICS

### **1. The program baseline should be transparent, released promptly and normalized to account for weather.**

Historically, Washington has required greenhouse gas emission data reporting by most covered entities, but no formal data verification or auditing has been conducted. In determining the program baseline, PSE 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 covered entities and the public can review it for quality control purposes.

Additionally, considering the impact of variable weather on carbon emissions in the State of Washington, Ecology should ensure that the program baseline is based on weather-normalized conditions.

### **2. Allowance holdings should not be posted publicly.**

The volume of allowances in entity holding accounts should not be made public.<sup>22</sup> Posting this information publicly contradicts the CCA statute's instructions that Ecology's rules "minimize the potential for market manipulation" and could pose barriers to linkage.<sup>23</sup>

### **3. Ecology should set standards for when it decides to remove allowances.**

The current Draft Rule does not make clear the conditions under which Ecology will decide to remove allowances from the marketplace.<sup>24</sup> PSE is concerned that this discretion, without articulated standards, will provide unnecessary market uncertainty that will make the program less predictable for regulated entities. PSE asks that Ecology include in the rule clear standards for when Ecology will remove allowances.

### **4. The regulations should maximize the possibility of linking with other programs.**

As noted in PSE's previous letter, the CCA directs Ecology to develop rules that allow for linkage of Washington's cap-and-invest program with similar programs in other jurisdictions.<sup>25</sup> PSE supports Ecology's recently announced partnership with the Western Climate Initiative, as this will further future linkage.

Specifically, PSE encourages Ecology to ensure it adopts a cap-and-invest program that is as consistent as possible with the California Air Resources Board's (CARB) cap-and-trade program to maximize the possibility for future linkage with the Western Climate Initiative. Accordingly, Ecology should adopt the same price floor, ceiling and containment mechanisms, and relevant offset protocols as CARB's program. This would increase certainty for regulated entities, and it would protect against adverse competitiveness impacts, as well as emissions leakage.

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<sup>22</sup> Climate Commitment Act, Sec. 11(7)(b); WAC 173-446-150(4).

<sup>23</sup> Climate Commitment Act, Sec. 12(8).

<sup>24</sup> See, e.g., WAC 173-446-250(2) ("When Ecology is required *or elects to remove and retire allowances*. .") (emphasis added).

<sup>25</sup> Climate Commitment Act, Sec. 8(3).

PSE supports the issues identified in the comments submitted by the International Emissions Trading Association that identify opportunities and challenges to Washington cap-and-invest program linkage with California's cap-and-trade program (see Attachment 3). This table highlights and prioritizes crucial linkage policy points.

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PSE appreciates the opportunity to engage with Ecology on these important issues and looks forward to continued dialogue throughout the rulemaking process. Should you have any questions, please reach out to Kassie Markos (kassie.markos@pse.com; 206-258-0308) or Lorna Luebbe (lorna.luebbe@pse.com; 206-604-3773).

Sincerely,

A handwritten signature in black ink that reads "Lorna Luebbe". The signature is written in a cursive, flowing style.

Lorna Luebbe  
Assistant General Counsel, Director of Environmental Services  
Puget Sound Energy

Cc: Amanda Maxwell  
Executive Director  
Washington Utilities and Transportation Commission



## ATTACHMENT 1

Summary of PSE Suggested Regulatory Amendments	
WAC Provision	Proposed Amendment
WAC 173-446-240(2)	Reductions in no-cost allowances for gas utilities should be adjusted to minimize customer impacts and reflect timing constraints.
WAC 173-446-385(4) and (6)	Delete the undue discretion Ecology has granted itself over whether to issue price ceiling unit sales. See Attachment 4.
WAC 173-446-020(1)(o)	Expressly state that RNG purchased to comply with the CCA does not have to be tracked to specific end-users. See Attachment 5.
WAC 173-446-230(1)	Grant electric utilities additional no-cost allowances from the allowance price containment reserve in the unforeseen circumstance that the utility's approved forecast used by Ecology does not align with the actual generation mix during the compliance period.  Implement clarifying redlines in Attachment 6.
WAC 173-446-230(1)(c)(i)	Use facility-specific emission factors for electricity generation served by natural gas units.
WAC 173-446-150(4)	Do not make public the volume of allowances in entity holding accounts.
WAC 173-446-250	Set standards for when Ecology will elect to remove allowances from the total allowance pool.

**ATTACHMENT 2**

**Table 1.**

**Different Approaches to Calculating and Reporting GHGs from the Electric Sector**

PSE - Historic		Baseline (Ecology Calculated)	Forecast (Proposed)	Compliance (WAC 173-441)	
<i>Owned Resources (In-State)</i>	Uses facility level data reported in eGGRT	Uses a "load-based" approach, emissions calculated based on emissions profile of power sources that deliver electricity to Washington. Uses Commerce Fuel Mix profiles. Emission factors and underlying methodology are not made available to the public.	Cost Burden Allowances = Forecasted Generation (by resource type) x Generic EF <sub>Resource</sub> The emission factor for natural gas and coal are TBD; CETA-identified renewable and non-emitting, and coal transition power is zero; Unspecified power based is 0.437 tonne CO2e/MWh.	<i>Owned Resources (In-State)</i>	Uses facility level data reported in eGGRT
<i>Specified (Firm Contracts, Market Firm)</i>	Uses CETA/WUTC Methodology (Firm Deliveries <sub>MWh</sub> x Facility Calculated EF)			<i>Specified</i>	For specified sources, uses facility specific EF for delivered electricity (by category). Ecology will define facility EFs
<i>Unspecified Market</i>	Uses CETA/WUTC Methodology (Net Market MWh to Serve Load x 0.437 tonne CO2/MWh)			<i>Unspecified</i>	For unspecified sources, uses Ecology defined EF for delivered electricity (by category). EF=0.437 tonne CO2e/MWh

Notes:

EF = Emission Factor

eGGRT = Electronic Greenhouse Gas Reporting Tool (EPA)

### ATTACHMENT 3

#### International Emissions Trading Association Table:

#### Evaluating Alignment Across Washington and California Carbon Pricing Options

Design Element	Important for Environmental Integrity?	Important for Policy Implementation?	Already Aligned?	Ready to Link?
<u>Technical Issues</u>				
<b>1. Measurement, Reporting, and Verification</b>				
a. Measurement methods	Yes	Yes	Yes	Yes
b. Reporting of process emissions	Yes	Yes	Yes	Yes
c. Reporting of fugitive emissions	Yes	Yes	TBD	TBD
d. Reporting of emissions from imported power	Yes	Yes	Yes	Yes
<b>2. Allowance Tracking System</b>				
a. Registries (e.g., serial number systems)	Yes	Yes	Yes	Yes
b. Data collection on transactions	No	Maybe	Yes	Yes
c. Public access to data	Maybe	Yes	TBD	TBD
<u>Emissions Reduction Goal</u>				
<b>3. Emissions Cap</b>				
a. Are caps defined in terms of total tons?	Yes	Yes	Yes	Yes
b. Are cap stringencies coordinated?	Maybe	Maybe	No	No
c. Are programs binding?	Yes	Yes	Yes	Yes
d. Are other policies accounted for in cap setting?	Maybe	Maybe	No	No
<b>4. Emissions Coverage</b>				

a. Covered sectors	No	Maybe	Yes	Yes
b. Point of regulation	No	Maybe	Yes	Yes
c. Compliance thresholds	No	Maybe	Yes	Yes
d. Coverage of imported, fugitive, process emissions	Yes	Yes	TBD	TBD
e. Compliance periods	No	No	No	Yes
f. Compliance obligations (e.g., interim retirement)	Maybe	Maybe	Maybe	Maybe
<u>Allocation of Allowances</u>				
<b>5. Allocation</b>				
a. Method of allocation to electricity	No	No	Yes	Yes
b. Method of allocation to gas	No	No	Yes	Yes
c. Method of allocation to transport	Maybe	Maybe	Yes	Yes
d. Method of allocation to industry EITE	Yes	Yes	No	No
e. Method of allocation to industry non-EITE	No	No	TBD	TBD
f. Treatment of entrants and exits	No	Maybe	TBD	TBD
g. Use of revenue from auctions	No	Maybe	TBD	TBD
h. Measures to address leakage	Yes	Yes	TBD	TBD
<b>6. Auction Coordination</b>				
a. Third-party participation	Maybe	Maybe	Yes	Yes
b. Purchase limit	No	Maybe	Yes	Yes
c. Auction format	No	No	Yes	Yes
d. Frequency and timing	No	No	TBD	TBD

e. Common auction platform	No	No	Yes	Yes
<u>Cost Management</u>				
<b>7. Temporal Considerations</b>				
a. Banking provisions	Maybe	Yes	Yes	Yes
b. Quantitative restrictions (e.g., holding limit)	No	Maybe	Yes	Yes
c. Qualitative restrictions (e.g., value across periods)	Maybe	Maybe	TBD	TBD
<b>8. Carbon Offsets</b>				
a. Qualitative limits	Maybe	Yes	No	No
b. Quantitative limits	Maybe	Yes	No	No
c. Certification protocols	Maybe	Yes	TBD	TBD
d. Invalidation rules	Maybe	Yes	Yes	Yes
e. Liability rules	No	Yes	TBD	TBD
<b>9. Price Collars</b>				
a. Price floor and rate of change	Yes	Yes	TBD	TBD
b. Emissions containment reserve	Yes	Yes	No	No
c. Cost containment reserve	Yes	Yes	TBD	TBD
d. Price ceiling and rate of change	Yes	Yes	TBD	TBD
e. Use of unsold allowances	Yes	No	No	No
f. Do additional allowances come from within cap?	Yes	Yes	No	No
<u>Enforcement and Contingencies</u>				
<b>10. Legal Provisions</b>				
a. Penalties for noncompliance	Yes	Yes	No	No
b. Market oversight	Yes	Yes	Yes	Yes

c. Provisions for delinking	Maybe	Maybe	TBD	TBD
d. Process for regulatory updates	Maybe	Yes	TBD	TBD

## ATTACHMENT 4

### 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 5

### 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.**

## ATTACHMENT 6

### Proposed Redline of WAC 173-446-230(1)

#### WAC 173-446-230 Distribution of allowances to electric utilities.

- (1) **Total no cost allowances allocated to electric utilities.** Allowances allocated to electrical utilities for a compliance period are based on the cost burden effect of the program. Ecology will use the following method to determine how cost burden and its effect will be used to allocate allowances to each electric utility for each ~~emissions year~~ **compliance period**.
  - (a) Ecology will use ~~approved~~ utility-specific forecasts, **that are approved by the appropriate governing board or the utilities and transportation commission, of each utility's supply and demand for their** ~~that provide~~ retail electric load- **based upon any of the following sources to most accurately determine the resource mix that will be used by an electric utility to comply with the clean energy transformation act, RCW 19.405, for a particular compliance period.**
    - (i) The clean energy implementation plan for that utility that is approved and submitted pursuant to chapter 19.405 RCW, the Washington clean energy transformation act.
    - (ii) An approved integrated resource plan, or supporting materials for that plan, that is consistent with or used for the clean energy implementation plan.
    - (iii) Another forecast approved by the appropriate governing board or the utilities and transportation commission of each utility's supply and demand.
  - ~~(b) Ecology will determine the generation resource fuel type forecasted to be used to provide retail electric load for a utility for the compliance period. This determination will be based on the following sources, in the order necessary to most accurately determine the resource mix that will be used by that electric utility to comply with the clean energy transformation act, RCW 19.405.~~
- ~~(iv) The clean energy implementation plan for that utility that is approved and submitted pursuant to chapter 19.405 RCW, the Washington clean energy transformation act.~~
- ~~(v) An approved integrated resource plan, or supporting materials for that plan, that is consistent with or used for the clean energy implementation plan.~~

~~(vi) — Another source that is consistent with a forecast approved by the appropriate governing board or the utilities and transportation commission of each utility's supply and demand.~~

**ATTACHMENT 7**

**Prior Comments and January 26, 2022 Joint Comments**



January 26, 2022

Attention: Rachel Assink  
Department of Ecology  
Air Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Attention: Cooper Garbe  
Rulemaking Lead  
Department of Ecology

**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.<sup>1</sup> 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

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<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup> 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<sup>4</sup>. 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

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<sup>2</sup> Climate Commitment Act, Sec. 2 (21)

<sup>3</sup> Climate Commitment Act, Sec. 14 (1)

<sup>4</sup> 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...”<sup>5</sup> 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...”<sup>6</sup> 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.

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<sup>5</sup> Climate Commitment Act, Sec. 14 (2)(b)

<sup>6</sup> 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,<sup>7</sup> 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”<sup>8</sup> 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.”<sup>9</sup>
- 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.

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<sup>7</sup> Climate Commitment Act, Sec. 14(2)(b)

<sup>8</sup> WAC 173-446-385

<sup>9</sup> 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.<sup>10</sup> 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.

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<sup>10</sup> 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.<sup>11</sup>

## 6) Emission Factors

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

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<sup>11</sup> 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,

*/s/ Bruce Howard*  
Bruce Howard  
Sr. Director of Environmental Affairs  
Avista

*/s/ Mike Wilding*  
Mike Wilding  
Vice President, Energy Supply Management  
Pacific Power

*/s/ Mary Wiencke*  
Mary Wiencke  
Executive Director  
Public Generating Pool

*/s/ Lorna Luebbe*  
Lorna Luebbe  
Assistant General Counsel,  
Director of Environmental Services  
Puget Sound Energy



December 2, 2021

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

Puget Sound Energy (PSE) is Washington State's oldest and largest investor-owned energy utility, serving over 1.1 million electric and over 850,000 natural gas customers with safe and reliable energy services. In January, PSE announced an aspirational goal to be a Beyond Net Zero Carbon company by 2045. PSE will target reducing its own carbon emissions to net zero and go beyond by helping other sectors to enable carbon reduction across the state of Washington. In alignment with our Beyond Net Zero aspirations, PSE was proud to support the Climate Commitment Act (CCA) this past session and is preparing in earnest for the implementation of this important policy.

In preparing for implementation, PSE has identified the following key issues for the Department of Ecology's (Ecology) consideration during the development of the CCA program rules.

**Linkage**

Ecology is directed in statute<sup>1</sup> to develop rules that allow for linkage of Washington's cap-and-invest (C&I) program with similar programs in other jurisdictions. The ability to link, whether immediately or in the near future, must be both established and preserved through the initial rulemaking process. Linkage allows the program to maximize market efficiencies and reduce greenhouse gas (GHG) emissions at the lowest cost possible. As such, throughout the rulemaking process, Ecology must focus on key areas that preserve the ability to link such as the price floor/ceiling, price containment mechanisms, consistent program infrastructure, and other market features. PSE is conducting further analysis on the issue of linkage and will follow-up with the agency.

Additionally, PSE believes it essential that the agency be in close discussions with other potential linking jurisdictions at both the leadership and technical levels to ensure that as market design progresses, the ability to link is preserved. PSE encourages just such collaboration with entities like the California Air Resources Board (CARB), Western Climate Initiative (WCI), the Ministry of Quebec, and others.

**Baseline**

Accurately determining PSE's baseline will directly impact compliance, allowance allocation, and protecting customers from undue cost burden. TransAlta's Centralia Generation Station emissions are in PSE's 2015-2019 consumption-based emissions baseline reflecting energy consumed by Washington State customers for those years. As such, we believe that Ecology should recognize in PSE's allowance allocation scheme that this power will need to be replaced following the closure of

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<sup>1</sup> RCW 70A.65

Centralia in 2025. PSE looks forward to discussions with Ecology on this issue prior to direction from the agency on allocations.

### **Allowance Allocation for Electric Utilities**

PSE recommends that Ecology encourage and allow the electric utility sector to collectively recommend methodologies for the forecasting and allocating of allowances for the sector consistent with the statute. PSE is committed to working with other utilities and has started these discussions. Ecology should coordinate with and convey this idea to the Washington Utilities and Transportation Commission (WUTC) as well. Ultimately, PSE believes that overly prescriptive regulatory language could impede this sector's ability to plan for the future and manage impacts to customers.

Furthermore, Ecology should consider adopting multi-compliance period utility allocation schedules to allow for the required infrastructure planning and capital investments – ideally prior to the initial compliance period but certainly prior to the second compliance period. The electric sector already has longer duration forecasts that can be leveraged for multi-compliance period allocation schedules.

### **Offsets & Cap**

PSE believes Ecology should not attempt to reduce the use of allocated allowances based on offset usage. Furthermore, we would like to recommend that the agency not further reduce the cap based on offset usage. Given the program structure of distributing allocated allowances in October for the following year and four-year compliance periods, it is difficult to conceptualize how Ecology would operationalize either mechanism. Given the complex nature of this issue, PSE strongly encourages Ecology to convene a robust discussion of how offsets could work under the CCA in advance of draft rules being written on this topic.

### **Confidentiality in Markets**

Ecology should **not** make public the volume of allowance in entity holding accounts as proposed in the draft rule. Confidentiality in market positions is critical to a well-functioning allowance market and making this information public risks the integrity of the market. The CCA requires rules that limit market manipulation. Given that statutory direction, PSE requests that Ecology strike that language from the draft rules currently circulating<sup>2</sup>. Moreover, PSE 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.

### **Coordination with WUTC and Certainty**

Implementation of the CCA and operation of the C&I program will be deeply impactful to our company and our customers. The program rules developed by Ecology need to provide long-term certainty for covered entities. In particular, load-serving utilities are required to do long-term planning over a 20+-year horizon to ensure energy supply meets energy demands (i.e. integrated resource planning) with critical investment decisions following that planning cycle. Further, utilities like PSE are embarking on regular planning through the Clean Energy Implementation Plan (CEIP) process – charting a course of action for clean electricity programs and investments in accordance with the goals set by Washington's Clean Energy Transformation Act (CETA). Utility scale investment and planning includes projects with lengthy lead times, significant capital requirements, and are subject to an entirely separate regulatory approval process at the WUTC. As such, program certainty and stability will be key for utilities like PSE and our customers as we move forward with implementation of and compliance with the CCA. It is imperative that Ecology and the WUTC are coordinated and working

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<sup>2</sup> WAC 173-446-150, (3)

<https://ecology.wa.gov/DOE/files/82/82d5b5eb-fe6c-44d4-9b0d-70ce8405e7db.pdf>

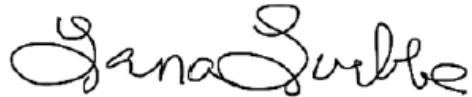


together on this important policy to ensure implementation is efficient and effective, particularly around the rate impacts to customers (especially low income customers) required for the investments needed to decarbonize the electric and natural gas systems.

### **Conclusion**

PSE appreciates the opportunity to raise these initial points and looks forward to continued dialogue throughout the rulemaking process. Should you have any questions, please reach out to Kassie Markos ([kassie.markos@pse.com](mailto:kassie.markos@pse.com); 206-258-0308) or Lorna Luebbe ([lorna.luebbe@pse.com](mailto:lorna.luebbe@pse.com); 206-604-3773).

Sincerely,

A handwritten signature in black ink that reads "Lorna Luebbe". The signature is written in a cursive, flowing style.

Lorna Luebbe  
Assistant General Counsel, Director of Environmental Services  
Puget Sound Energy

Cc: Amanda Maxwell  
Executive Director  
Washington Utilities and Transportation Commission



December 3, 2021

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

**Introduction**

These initial comments regarding cap-and-invest (C&I) program rules are submitted jointly by Avista, Cascade Natural Gas, NW Natural, and Puget Sound Energy (collectively referred to as “Washington’s natural gas utilities”, the “Joint Utilities”, or “we”). We appreciate the opportunity to provide our collective thoughts as the Department of Ecology (“Ecology”) embarks on this important rulemaking effort.

Washington’s natural gas utilities are committed to decarbonization. We have each adopted and are diligently acting upon aspirational goals to reduce our respective emissions. The Joint Utilities are also participating in an investigation currently being undertaken by the Washington Utilities and Transportation Commission (WUTC) to study the regulatory barriers to, and opportunities for, decarbonizing the natural gas sector. Depending on the outcome, this study may yield additional policy recommendations that may complement the Climate Commitment Act (CCA).

The CCA will drive significant greenhouse gas emission reductions for covered entities to meet their proportional share of the State’s emission reduction limits under RCW 70A.45.020 as affirmed in the CCA statute: “(i)n order to ensure that greenhouse gas emissions are reduced by covered entities [including natural gas utilities] consistent with the limits established in RCW 70A.45.020, the department [of ecology] must implement a cap on greenhouse gas emission from covered entities and a program to track, verify, and enforce compliance...<sup>1</sup>”. As such, the Joint Utilities are working in earnest on the implementation of the CCA and appreciate the importance of engaging in the agency’s rulemaking process to accomplish the objectives of the C&I program in a manner that does not financially burden utility customers and achieves our sector’s portion of the statutory emission reduction limits.

In approaching the rulemaking process, the Joint Utilities would like to underscore that in our commitment to decarbonization we are technology neutral in terms of what low

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<sup>1</sup> RCW 70A.65.060

carbon fuel flows through the pipe system.<sup>2</sup> Rather, it is of paramount importance to us that the value of our existing infrastructure be recognized as benefitting the regional energy system and electric and natural gas customers alike. For example, gas-fired peaker power plants allow for the integration of higher levels of intermittent renewables such as wind farms rely on existing pipes and storage facilities. Such gas-fired peaker plants can be transitioned to run on low carbon fuels such as renewable natural gas (RNG) and hydrogen. For these reasons, we appreciate the inclusion in the working draft language of an exemption for landfills that produce RNG. Inclusion of such language incentivizes the production of low carbon fuels that will be essential to decarbonization. We encourage Ecology to continue incentivizing the production of low carbon fuels like RNG and hydrogen as the rulemaking progresses.

## Key Issues

The Joint Utilities have identified the following key issues for Ecology's consideration during the development of the CCA program rules:

- **Linkage:** Ecology is directed in statute<sup>3</sup> to develop rules that allow for linkage of Washington's C&I program with similar programs in other jurisdictions. The ability to link, whether immediately or later in the first compliance period, must be both established and preserved through the initial rulemaking process so as to maximize market efficiencies that reduce the most GHG emissions at the lowest cost possible. In that vein, linkage should be pursued as a "more cost-effective means"<sup>4</sup> for natural gas utilities to meet their compliance obligations under the program thereby achieving their portion of the statewide carbon reduction goals. Moving forward, the Joint Utilities strongly encourage Ecology to closely collaborate, at the leadership and technical levels, with entities like the California Air Resources Board, Western Climate Initiative, the Ministry of Quebec, and others to ensure proper market design and that the ability to link can be pursued imminently.
- **Allowances:** As it relates to the allocation and use of allowances, the Joint Utilities would like to emphasize the following points:
  - Free allocation of allowances is proscribed by the CCA for natural gas utilities with the allocation amount to decline according to their proportional share of reductions necessary to meet state carbon reduction goals. Rules for allocation should adhere to lawmakers' intent and direction to provide free allowances with an increasing percentage consigned to auction for the benefit of ratepayers that decline as the overall cap declines.
  - Natural gas is not available geographically in all parts of our state, however, the effect of the existing gas infrastructure in certain parts of the

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<sup>2</sup> Low carbon fuels include renewable natural gas (RNG), hydrogen, and synthetic natural gas.

<sup>3</sup> RCW 70A.65.060

<sup>4</sup> RCW 70A.65.060

state complements the entirety of the state electric system by keeping demand for electric supply and infrastructure and thus electric customer costs lower. We believe the CCA will drive a transition to low carbon fuels in the state's existing gas infrastructure system that will continue to complement the electric system thereby achieving the highest carbon reductions at the lowest cost to customers.

- Customer benefits from consigned allowances should be viewed expansively to accommodate technological means for reducing emissions including, but not limited to, carbon capture sequestration, and utilization, low carbon fuels, near-net zero gas equipment and technologies, and other GHG reduction activities.
  - Because natural gas utilities are not all similarly situated (operating in different climates and having unique customer characteristics), they should be afforded flexibility in their use of allowance proceeds to benefit customers. Utilities must have flexibility to plan for compliance and protect customers from potential rate shock given that variable weather conditions (both temperature and snowpack) can result in volatile natural gas sales and emissions may rise and fall unpredictably from year to year.
- **Emissions Treatment:** As the blend of gaseous fuels placed into the pipeline continues to diversify, the overall carbon intensity of the gas system will likewise evolve. It is therefore imperative that the treatment of emissions from fossil gas, as well as, low carbon fuels be established in a way that accurately accounts for the carbon intensity of a regulated entity's total fuel mix, and allows the natural gas utilities to expedite the decarbonization of the gas system. Low carbon fuels can range from carbon positive, carbon neutral or even deeply carbon negative (e.g. dairy manure digesters). In order to have a scientifically accurate and measurable C&I program, a full life-cycle carbon accounting of low carbon fuels is required. Internationally recognized carbon accounting standards for low carbon fuels should be employed in this rule. Accounting for the full life-cycle emissions of low carbon fuels would incentivize increased low carbon fuel blending to achieve carbon reductions sooner and ultimately transition to an entirely carbon-free gas product throughout the state. As a technology-neutral market mechanism, C&I should recognize the life-cycle benefits of low carbon fuels to facilitate and accelerate the cost-effective decarbonization of both the electric and natural gas systems.
  - **Driving Innovation:** In writing the rules, Ecology should keep in mind that innovation should be encouraged for the adoption of cost-effective, feasible and commercially available technologies that can decarbonize our sales and our sector.

- **Driving Reduction in Other Sectors:** With a transition to low carbon fuels the natural gas system is uniquely poised to help other sectors decarbonize, including long-haul trucking, marine and other difficult to electrify industrial customers and transportation sectors, and gas transport customers (to whom we only deliver gas and are not covered entities themselves). The Joint Utilities will work with Ecology and the WUTC to develop regulatory mechanisms to promote such emission reductions.

## Recommendations

The CCA specifies several instances where the Department must consult with the WUTC. The interplay between the requirements of the C&I program and economic regulatory mechanisms will be deeply impactful to our companies. It is of the utmost importance that Ecology and WUTC regularly consult and coordinate with each other and with the natural gas utilities to mitigate possible adverse impacts on our customers and more broadly the state's economy.

Moving forward, we would encourage Ecology to convene a sector-specific working group for the natural gas utilities, including the WUTC as appropriate, to ensure implementation of the CCA is efficient and effective and protects our collective customer bases from undue cost burdens while achieving the goals of the law.

## Conclusion

Thank you for the opportunity to provide these initial comments. The Joint Utilities look forward to a continued dialogue throughout the rulemaking process.

Sincerely,

*/s/ Bruce Howard*

Bruce Howard  
Senior Director of Environmental Affairs  
Avista

*/s/ Kellye Dundon*

Kellye Dundon  
Environmental Policy & Programs  
Manager  
NW Natural

*/s/ Abbie Krebsbach*

Abbie Krebsbach  
Environmental Director  
Cascade Natural Gas

*/s/ Lorna Luebbe*

Lorna Luebbe  
Assistant General Counsel, Director of  
Environmental Services  
Puget Sound Energy



November 16, 2021

ATTN: Rachel Assink  
Department of Ecology  
Air Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600

**RE: Draft rules to Chapter 173-441 WAC (Reporting of Emissions of Greenhouse Gases)**

Puget Sound Energy (PSE) is Washington State's oldest and largest investor-owned energy utility, serving over 1.1 million electric and over 850,000 natural gas customers with safe and reliable energy services. In January, PSE announced an aspirational goal to be a Beyond Net Zero Carbon company by 2045. PSE will target reducing its own carbon emissions to net zero and go beyond by helping other sectors to enable carbon reduction across the state of Washington. In alignment with our Beyond Net Zero aspirations, PSE was proud to support the Climate Commitment Act (CCA) this past session and is preparing in earnest for implementation of this important policy.

PSE respectfully submits the following comments in response to the Washington State Department of Ecology's (Ecology or The Department) request for public comment on proposed rules to Chapter 173-441 WAC (Reporting of Emissions of Greenhouse Gases). PSE appreciates the opportunity to comment and looks forward to further engagement with Ecology as the rulemaking process continues.

In making these comments, PSE would like to highlight that Ecology is directed in statute (and acknowledged in form CR-102<sup>1</sup>) to develop rules that facilitate program linkage with other jurisdictions. The ability to link, whether immediately or in the future, must be both established and preserved through the initial rulemaking process so as to maximize market efficiencies that reduce greenhouse gas (GHG) emissions at the lowest cost possible. Additionally, coordination and collaboration with other jurisdictions, especially California, through entities like the California Independent System Operator (CAISO) and the California Air Resources Board (CARB), is also necessary to ensure that Washington and California's programs (and market) can work together efficiently. We strongly encourage Ecology to solicit other agencies' expertise as rules are developed and the program is implemented.

**Treatment of Electric Power Entities (EPE) and the Energy Imbalance Market (EIM)**

Ensuring the protection of customers and harmony with existing regulations is crucial to PSE and imperative in CCA rulemaking. To that end, PSE signed onto and affirms the comments submitted by the Joint Utilities regarding the rule treatment of EPE, and imports of electricity through the EIM or other centralized markets. The intention of these comments is to:

- Avoid unintentional compliance obligations for emissions assigned to imports of electricity through the EIM or any other centralized market that would be inconsistent with the CCA; and

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<sup>1</sup> <https://ecology.wa.gov/DOE/files/47/47349f52-2ee6-49cc-8adb-147510926e9a.pdf>

- To ensure that, even on an interim basis, the point of regulation associated with energy imported into the state via centralized markets is, to the extent possible, consistent with the point of regulation for all other electric power imports and that emissions assigned to those imports are appropriate.
- While underscoring that the Joint Utilities have an interest in ensuring that a robust set of rules is adopted at the outset such that future linkages with external cap-and-trade programs will not be jeopardized.

Therefore, PSE affirms the Joint Utilities recommendation for a technical workshop in the near-term to develop an interim solution to address emissions associated with EIM imports. Please reference the comments of the Joint Utilities for further details.

Further, PSE requests that the reporting threshold of 10,000 metric tons for EPE reporters be removed so as to maintain parity in the carbon market that will be developed under the CCA. This is consistent with California's reporting threshold.

### **Emissions Factor**

PSE requests that Ecology adopt the emissions factor of 0.428 metric tons of CO<sub>2</sub>e per MWh for unspecified electricity imports, also utilized by California and Oregon, as noted by other parties in earlier comments. Washington is not on an island and must consider the broader region as we work to reduce emissions through a market-based approach. Adopting the same emissions factor ensures consistency and efficiency for the region. In addition, we recommend Ecology work with CARB to adopt one clearinghouse for emissions factor registration intended for imported claims. This is necessary for consistency and to maintain accuracy with CARB.

### **Reporting**

PSE believes that existing processes and timelines associated with California's program should be leveraged for cost and program efficiencies and to promote program linkage. PSE appreciates language in the proposed rule, as it relates to EPE reporting, requiring a preliminary report by March 31 and a final revised report by June 1 in closer alignment with CARB reporting deadlines. However, a single reporting deadline of June 1 for EPE reporters should be considered for efficiency and streamlining purposes. Should the March 31 and June 1 dates stand, PSE requests that Ecology develop a guidance or FAQ document with a focus on the expectations of the preliminary and final reports to assist EPE reporters, similar to CARB's EPE FAQ<sup>2</sup>.

Additionally, PSE has identified several scenarios where expanded content for covered and non-covered emissions subject to CCA cannot be accommodated by the reporting systems currently used by Ecology. In the proposed rule, Ecology requires local distribution companies (LDCs) to report, separately and individually, end-user emissions of methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), and carbon dioxide (CO<sub>2</sub>) from biomass-derived fuels (non-covered GHGs). However, the Environmental Protection Agency's (EPA) Electronic Greenhouse Gas Reporting Tool (e-GGRT) cannot support these data elements using the e-GGRT Subpart NN platform (Suppliers of Natural Gas and Natural Gas Liquids). Currently, only one fuel type can be reported in e-GGRT Subpart NN in gas distribution systems, which is pipeline natural gas. Furthermore, the e-GGRT Subpart NN program only calculates for CO<sub>2</sub> emissions from the end-user, and it does not account for CH<sub>4</sub> and N<sub>2</sub>O in the final report. For LDCs to comply with the rule using e-GGRT, the platform will need to be changed, or other systems will need to be put in place to gather this data.

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<sup>2</sup> [https://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/epe-faqs-2020.pdf?\\_ga=2.137046515.2127713389.1635373646-1130883803.1621468123](https://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/epe-faqs-2020.pdf?_ga=2.137046515.2127713389.1635373646-1130883803.1621468123)

It is anticipated that LDCs will want to utilize biogenic accounting immediately so suitable systems must be in place on day one to report all covered and non-covered emissions, including biofuels and biomass-derived emissions. PSE sees three options Ecology could take to accommodate biogenic gas and emissions reported by LDCs:

- 1) Ecology develops an agency spreadsheet tool specific to LDCs reporting biogenic gas and associated GHGs under Subpart NN;
- 2) The Department works with the EPA to modify e-GRRRT; or
- 3) Adoption and implementation of California's e-GGRT platform (Cal e-GGRT).

Given the timing of this rule and associated logistical coordination with either EPA or California, the spreadsheet approach is likely the most straightforward and expedient option to capture this important data. Regardless, PSE is supportive of all three of these approaches.

### **Verification**

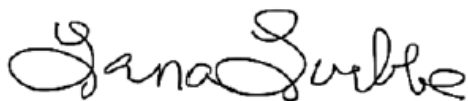
PSE supports language included in the proposed rule adopting a verification deadline of August 10 consistent with California's program and procedures. Ecology should continue to consider language that maximizes efficiency, avoids duplicative reporting mechanics and requirements, and preserves the ability for program linkage with other jurisdictions, as noted earlier.

As it relates to third-party verifiers, PSE is supportive of language in the proposed rule "clarifying that conflict of interest does not include working for a reporter to verify GHG emissions in another jurisdiction." We agree with other commenters that verification requirements should be streamlined to ensure an adequate supply of third-party verifiers and to minimize burden on those regulated. Generally, Ecology should consider whether there will be enough qualified entities to feasibly meet verification requirements in the proposed rule, particularly in year one of the program. PSE strongly recommends that Ecology provide formal annual training to verification bodies before the first report is due and consider creating a list of verifiers for entities to select from.

### **Conclusion**

PSE appreciates the opportunity to provide comment and looks forward to continued dialogue throughout the rulemaking process. Should you have any questions, please reach out to Kassie Markos at 206-258-0308 or Lorna Luebbe at 206-604-3773.

Sincerely,

A handwritten signature in black ink that reads "Lorna Luebbe". The signature is written in a cursive, flowing style.

Lorna Luebbe  
Assistant General Counsel, Director of Environmental Services  
Puget Sound Energy





November 16, 2021

***Filed Via Web Portal***

ATTN: Rachel Assink  
Department of Ecology  
Air Quality Program  
P.O. Box 47600  
Olympia, WA 98504-7600

**RE: Rulemaking – Chapter 173-441 WAC, Reporting of Emissions of Greenhouse Gases**

On October 6, 2021, the Washington Department of Ecology (Ecology) issued form CR-102 (WSR 21-20-137) soliciting formal comments on proposed amendments to Chapter 173-441 WAC (Reporting of Emissions of Greenhouse Gases) by November 16, 2021. These comments are submitted jointly by Avista, PacifiCorp, the Public Generating Pool, Puget Sound Energy, Seattle City Light, and Tacoma Power (collectively referred to as “Joint Utilities”).

The Joint Utilities’ intent in submitting the following comments is two-fold:

- I. To ensure that the amendments to Chapter 173-441 WAC relative to electric power entity reporting of greenhouse gas (GHG) emissions do not create an unintentional compliance obligation under Chapter 173-446 WAC (Climate Commitment Act Program) for emissions associated with imports of electricity through the Energy Imbalance Market (EIM) or any other centralized market that would be inconsistent with the Climate Commitment Act (CCA, Chapter 70A.65 RCW); and
- II. To ensure that, even on an interim basis, the point of regulation associated with energy imported into the state via centralized markets is, to the extent possible, consistent with the point of regulation for all other electric power imports and that emissions assigned to those imports are appropriate.

The Joint Utilities also have an interest in ensuring that a robust set of rules is adopted at the outset such that future linkages with external cap-and-trade programs will not be jeopardized.

Accordingly, the Joint Utilities recommend that Ecology convene a technical workshop in the near-term to develop an interim solution to address emissions associated with EIM imports. The Joint Utilities believe that sufficient data exist for Ecology to estimate emissions associated with EIM imports in the near-term and that Ecology can put an interim solution in place without a need to assign emissions to EIM purchasers. Given the complexity and importance of these issues, more fully described below, Ecology should take the additional time needed to develop a thoughtful interim solution for the relatively narrow issue of EIM imports while deferring a longer-term discussion regarding treatment of imports associated with the EIM within the context of a broader regional centralized market.

### **Avoiding unintentional compliance obligations for EIM imports.**

Ecology acknowledges in form CR-102 that one of the purposes of updating the GHG reporting requirements in Chapter 173-441 WAC is to “support the CCA and facilitat[e] program linkage with other jurisdictions.”<sup>1</sup> Indeed, the draft rule language for the CCA Program references emissions reported under Chapter 173-441 WAC in a number of places, including in determining covered emissions<sup>2</sup> and in allocating responsibility for those covered emissions to whichever entity *reports* them<sup>3</sup>.

The general requirements for electric power entities proposed in WAC 173-441-124 state that the owner or operator of an electric power entity must *report* GHG emissions from “all applicable source categories.” These applicable source categories are listed as being:

- i. Electricity importers and exporters, as defined in the proposed rule;
- ii. Retail providers, including multijurisdictional retail providers, as defined in the proposed rule; and
- iii. Bonneville Power Administration (BPA).

By defining “electricity importer” in WAC 173-441-124(2)(a)(iii) to mean *the EIM purchaser*<sup>4</sup> for electricity imported through a centralized market, Ecology appears to be inadvertently assigning responsibility for emissions associated with that electricity under the draft CCA Program rule in a manner that is not reflected in the text of the CCA itself<sup>5</sup>. Because the proposed rule has the EIM purchaser *reporting* these emissions, the EIM purchaser thereby becomes responsible for them under proposed WAC 173-446-040(3). Assigning responsibility for emissions associated with EIM imports to

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<sup>1</sup> See “Purpose of the proposal and its anticipated effects, including any changes in existing rules,” page 2 of form CR-102 (WSR 21-20-137): <https://ecology.wa.gov/DOE/files/47/47349f52-2ee6-49cc-8adb-147510926e9a.pdf>

<sup>2</sup> Proposed WAC 173-446-040(1)

<sup>3</sup> Proposed WAC 173-446-040(3)

<sup>4</sup> WAC 173-441-124(2) further defines “EIM purchaser” to mean “for a given data year an electric distribution utility or electric power entity that directly or indirectly purchases any electricity through the EIM to serve Washington state load in the data year.”

<sup>5</sup> The definitions for “electricity importer” provided in the Climate Commitment Act [[RCW 70A.65.010\(27\)\(c\)](#)] defer identifying the electricity importer for electricity acquired through a centralized market (i.e. the Energy Imbalance Market) until the Department of Ecology, in consultation with the Department of Commerce and the Utilities and Transportation Commission, adopts by rule a methodology for addressing the issue specifically [[RCW 70A.65.080\(1\)\(c\)](#)]. Ecology has until October 2026 to complete this EIM-specific rulemaking.

the EIM purchaser is inconsistent with the “first jurisdictional deliverer” approach stipulated by the CCA<sup>6</sup> and runs counter to the Legislature’s deferral of the issue to a separate rulemaking.

In addition to the above, Ecology does not have a reasonable basis for assigning emissions to EIM purchasers. Under California’s Mandatory Reporting Rule, emissions associated with EIM imports are calculated using a two-step process.<sup>7</sup> First, deemed delivered EIM emissions are reported by EIM participating resource Scheduling Coordinators based on reports from the California Independent System Operators (CAISO) which identify resource-specific imports associated with the EIM delivered to the CAISO balancing authority area (BAA). Second, EIM outstanding emissions are calculated by subtracting the deemed delivered emissions from a calculation of total EIM emissions which equals all EIM imports multiplied by the unspecified emissions factor. The “EIM Outstanding Emissions” are then assigned to EIM purchasers. The basis for this assignment is associated with how the CAISO deems resource-specific imports into the CAISO BAA. It accounts for a phenomenon identified by the California Air Resources Board (CARB) known as “secondary dispatch” where non-emitting resources are deemed delivered to California and emitting resources are backfilled to serve load in the importing jurisdiction.<sup>8</sup> These outstanding emissions are allocated to EIM purchasers because the emissions are actually produced wholly outside of California and California cannot require out-of-state emissions to be reported as part of its program. Because the CAISO does not perform a resource-specific deeming for EIM imports into Washington, there is no secondary dispatch, no associated backfill, and no factual basis upon which to rely in adopting California’s approach.

#### **Ensuring program consistency.**

The practical differences between the Washington and California market contexts necessitate that Ecology engage thoughtfully with relevant stakeholders, including the CAISO, EIM participant utilities in Washington, and Bonneville Power Administration (BPA). As noted previously by BPA<sup>9</sup>, the physical footprints of EIM participants, such as the multi-state BAAs in the Northwest region, and scheduling points do not align neatly with Washington State borders. This brings into question when and whether EIM imports into a multi-state BAA are actually “imports” to Washington State. This complexity is among the reasons why the Legislature provided for additional time for a rulemaking to address the treatment of centralized market purchases such as EIM transfers.

However, the Joint Utilities recognize that a good estimate of emissions associated with EIM imports (and any emissions associated with expanded organized markets across the West) is important for Ecology to ascertain prior to the future rulemaking that would finalize treatment of centralized market

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<sup>6</sup> RCW 70A.65.080

<sup>7</sup> *Regulation for the Mandatory Reporting of Greenhouse Gas Emissions* at § 95111(h) (April 2019).

<sup>8</sup> *Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions Final Statement of Reasons* at p. 37-38 (December 2018).

<sup>9</sup> See Bonneville Power Administration comments “RE: Draft rules to Chapter 173-441 WAC (Reporting of Emissions of Greenhouse Gases)” dated August 1, 2021.

transactions. The Joint Utilities are confident that sufficient existing data exists for Ecology to estimate those emissions without requiring reporting from EIM purchasers, specifically through the CAISO and potentially other means. The Joint Utilities believe that a reasonable regulatory standard can be met that ensures consistency across the program and maintains the integrity of the programmatic calculation of total emissions associated with energy imported into Washington.

**Recommendation.**

The Joint Utilities recommend that Ecology host a technical workshop in the near-term specifically to develop an interim solution for estimating emissions associated with EIM imports. This will require the removal of references to EIM purchasers in the current rules and the Joint Utilities are providing a redline attached to these comments showing these proposed changes (see Appendix A). However, the Joint Utilities are confident that a solution can be reached in a relatively short timeframe and incorporated into the reporting program in such a way that does not delay overall program implementation. It will be critical to invite CAISO staff to the technical workshop, so that stakeholders can have an informed dialogue about the options and data that exist to support those options. With an interim solution in place, Ecology will then have sufficient time to initiate the EIM and centralized market rulemaking directed by the Legislature.

Sincerely,

*/s/Therese Hampton*

Therese Hampton  
Executive Director  
Public Generating Pool

*/s/Lisa Rennie*

Lisa Rennie  
Senior Advisor, Policy & Regulatory Affairs  
Tacoma Power

*/s/Mary Wiencke*

Mary Wiencke  
Vice President, Market, Regulation and  
Transmission Policy  
Pacific Power

*/s/Kevin Booth*

Kevin Booth  
Senior Environmental Scientist  
Avista Corp.

*/s/Robert W. Cromwell, Jr.*

Robert W. Cromwell, Jr.  
Director, Customer Energy Solutions  
Seattle City Light

*/s/Lorna Luebbe*

Lorna Luebbe  
Assistant General Counsel, Director of  
Environmental Services  
Puget Sound Energy

## APPENDIX A

### PROPOSED RULE LANGUAGE AMENDMENTS TO WAC 173-441-124

[...]

(2) Definitions specific to electric power entities.

(a) "Electricity importer" means:

(i) For electricity that is scheduled with an e-tag to a final point of delivery into a balancing authority area located entirely within Washington state, the electricity importer is identified on the e-tag as the purchasing-selling entity on the last segment of the tag's physical path with the point of receipt located outside Washington state and the point of delivery located inside Washington state;

(ii) For facilities physically located outside Washington state with the first point of interconnection to a balancing authority area located entirely within Washington state when the electricity is not scheduled on an e-tag, the electricity importer is the facility operator or owner;

~~((iii) For electricity imported through a centralized market, the electricity importer is the energy imbalance market purchaser;))~~

[...]

(b) "First jurisdictional deliverer" means the owner or operator of an electric generating facility in Washington state or an electricity importer.

(c) "Retail provider" means any of the following:

(i) An electric utility as defined in RCW 19.405.020(14);

(ii) Multijurisdictional retail providers;

(iii) Multijurisdictional consumer-owned utilities.

(d) "Imported electricity" means electricity generated outside Washington state with a final point of delivery within the state.

~~(i) ("Imported electricity" includes electricity from an organized market, such as the energy imbalance market.~~

~~(i))~~ "Imported electricity" includes imports from linked jurisdictions, but such imports shall be construed as having no emissions.

[...]

(k) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to procure electricity.

(l) "Electricity exporter" means electric power entities that deliver exported electricity. The entity that exports electricity is identified on the e-tag as the purchasing-selling entity (PSE) on the last segment of the tag's physical path, with the point of receipt located inside Washington state and the point of delivery located outside Washington state.

(m) "Electricity generation provider" means a provider of the energy or generation component of electricity services, as distinguished from the provider of transmission and/or distribution service that provides the wires for the transport of electricity. Electricity generation providers may include cogeneration facilities and other entities in addition to electrical distribution utilities that may provide both generation and transmission/distribution service.

~~((iii) "Energy imbalance market purchaser" or "EIM purchaser" means, for a given data year an electrical distribution utility or EPE that directly or indirectly purchases any electricity through the EIM to serve Washington state load in the data year.))~~

(n) "Electricity transaction" means the purchase, sale, import, export or exchange of electric power.

(o) "Electricity wheeled through Washington" or "wheeled electricity" means electricity that is generated outside Washington state and delivered into Washington state with the final point of delivery outside Washington state. Electricity wheeled through Washington state is documented on a single e-tag showing the first point of receipt located outside Washington state, an intermediate point of delivery located inside Washington state, and the final point of delivery located outside Washington state.

~~((vi) "Energy imbalance market" or "EIM" means the western energy imbalance market operated by the California independent system operator.))~~

(p) "Exported electricity" means electricity generated inside Washington state and delivered to serve load located outside Washington state. This includes electricity delivered from a first point of receipt inside Washington state, to the first point of delivery out-side Washington state, with a final point of delivery outside Washington state. Exported electricity delivered across balancing authority areas is documented on e-tags with the first point of receipt located inside Washington state and the final point of delivery located outside Washington state. Exported electricity does not include electricity generated inside Washington state then transmitted outside of Washington state, but with a final point of delivery inside Washington state. Exported electricity does not include electricity generated inside Washington state that is allocated to serve Washington state retail customers of a multijurisdictional retail provider, consistent

with a cost allocation methodology approved by the Washington state utilities and transportation commission and the utility regulatory commission of at least one additional state in which the multijurisdictional retail provider provides retail electric service.

(q) "Final point of delivery" means the sink specified on the e-tag, where defined points have been established through the affiliated registry. When e-tags are not used to document electricity deliveries, as may be the case within a balancing authority, the final point of delivery is the location of the load. Exported electricity is disaggregated by the final point of delivery on the e-tag.

(r) "First point of delivery in Washington" means the first defined point on the transmission system located inside Washington state at which imported electricity and electricity wheeled through Washington may be measured, consistent with defined points that have been established through the affiliated registry.

(s) "First point of receipt" means the generation source specified on the e-tag, where defined points have been established through the affiliated registry. When e-tags are not used to document electricity deliveries, as may be the case within a balancing authority, the first point of receipt is the location of the individual generating facility or unit, or group of generating facilities or units. Imported electricity and wheeled electricity are disaggregated by the first point of receipt on the e-tag.

(t) "Grid" or "electric power grid" means a system of synchronized power providers and consumers connected by transmission and distribution lines and operated by one or more control centers.

(u) "Importer of record" means the owner or purchaser of the goods that are imported into Washington state.

(v) "Last point of delivery in Washington" means the last defined point on the transmission system located inside Washington state at which exported electricity may be measured, consistent with defined points that have been established through the North American Energy Standards Board Electric Industry Registry.

(w) "Marketer" means a purchasing-selling entity that delivers electricity and is not a retail provider.

(x) "Particular end user" means a final purchaser of an energy product (e.g., electricity or thermal energy) for whom the energy product is delivered for final consumption and not for the purposes of retransmission or resale.

(y) "Point of receipt" or "POR" means the point on an electricity transmission or distribution system where an electricity receiver receives electricity from a first jurisdictional deliverer. This point can be an interconnection with another system or a substation where the transmission provider's transmission and distribution systems are connected to another system.

(z) "Power" means electricity, except where the context makes clear that another meaning is intended.

(aa) "Power contract" or "written power contract," as used for the purposes of documenting specified versus unspecified sources of imported and exported electricity, means a written document, including associated verbal or electronic records if included as part of the written power contract, arranging for the procurement of electricity. Power contracts may be, but are not limited to, power purchase agreements, enabling agreements, electricity transactions, and tariff provisions, without regard to duration, or written agreements to import or export on behalf of another entity, as long as that other entity also reports to ecology the same imported or exported electricity. A power contract for a specified source is a contract that is contingent upon delivery of power from a particular facility, unit, or asset-controlling supplier's system that is designated at the time the transaction is executed.

(bb) "Purchasing-selling entity" or "PSE" means the entity that is identified on an e-tag for each physical path segment.

(cc) "Retail end use customer" or "retail end user" means a residential, commercial, agricultural, or industrial electric customer who buys electricity to be consumed as a final product and not for resale.

(dd) "Retail sales" means electricity sold to retail end users.

(ee) "Sink" or "sink to load" or "load sink" means the sink identified on the physical path of e-tags, where defined points have been established through the affiliated registry. Exported electricity is disaggregated by the sink on the e-tag, also referred to as the final point of delivery on the e-tag.

(ff) "Source of generation" or "generation source" means the generation source identified on the physical path of e-tags, where defined points have been established through the affiliated registry. Imported electricity and wheels are disaggregated by the source on the e-tag, also referred to as the first point of receipt.

(gg) "Substitute power" or "substitute electricity" means electricity that is provided to meet the terms of a power purchase contract with a specified facility or unit when that facility or unit is not generating electricity.

(hh) "Tolling agreement" means an agreement whereby a party rents a power plant from the owner. The rent is generally in the form of a fixed monthly payment plus a charge for every megawatt generated, generally referred to as a variable payment.

(3) **Data requirements and calculation methods.** The electric power entity who is required to report under WAC 173-441-030(3) of this chapter must comply with the following requirements.

(a) General requirements and content for GHG emissions data reports for electricity importers and exporters.

[...]



~~((v) Imported electricity from the energy imbalance market. The reporting entity must separately report power obtained from the energy imbalance market.))~~

(v) Imported electricity supplied by asset-controlling suppliers.  
[...]

(e) Additional requirements for multijurisdictional retail providers. Multijurisdictional retail providers that provide electricity into Washington state at the distribution level must include the following information in the GHG emissions data report for each report year, in addition to the information identified elsewhere in this section.

(i) A report of the electricity transactions and GHG emissions associated with the common power system or contiguous service territory that includes consumers in Washington state. This includes the requirements in this section as applicable for each generating facility or unit in the multijurisdictional retail provider's fleet;

(ii) The multijurisdictional retail provider must include in its emissions data report wholesale power purchased and taken (MWh) from specified and unspecified sources and wholesale power sold from specified sources according to the specifications in this section, and as required for ecology to calculate a supplier-specific emission factor;

(iii) Total retail sales (MWh) by the multijurisdictional retail provider in the contiguous service territory or power system that includes consumers in Washington state;

(iv) Retail sales (MWh) to Washington state customers served in Washington state's portion of the service territory;

~~((v) Retail sales derived from the energy imbalance market;))~~