July 15, 2022

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

RE: Proposed Cap-and-Invest Program Rules (Chapter 173-446 WAC)

In addition to the comments submitted today by the Joint Utilities, which includes both investor- and consumer-owned utilities, Puget Sound Energy, Inc. and Avista Corporation (collectively, the "Electric Utilities") submit these comments on the Department of Ecology's ("Ecology") proposed rule ("Proposed Rule") implementing the Climate Commitment Act ("Act" or "CCA") on issues that particularly affect the electric sector. In doing so, the Electric Utilities aim to aid Ecology in finalizing regulations that begin reducing greenhouse gas ("GHG") emissions as quickly and equitably as possible.

Importantly, the Electric Utilities urge Ecology to ensure that the "cost burden" for which electric utilities subject to the Clean Energy Transformation Act ("CETA") receive no-cost allowances includes the full customer cost of the program, so customers who are already paying increased rates for CETA compliance are not saddled with additional cost. These allowances must cover the cost of electric redispatch caused by the Rule, as well as direct CCA compliance costs. CCA implementation will result in higher operating costs for and lower wholesale market sales from Washington-based generation. If no-cost allowances only cover direct compliance costs, the CCA will increase the cost of electricity for all Washingtonians, including low-income residents, on top of the increased costs for CETA compliance. The text and intent of the CCA counsels Ecology to allocate sufficient no-cost allowances to mitigate the impacts of the entire cap-and-invest program. Furthermore, the Electric Utilities encourage Ecology to rely on the expertise of the Washington Utilities and Transportation Commission ("WUTC") in calculating the CCA's full cost burden, as this agency already has unique and extensive expertise in overseeing utility generation forecasting, cost projections, and customer rate programs.

Puget Sound Energy ("PSE") is Washington State's oldest and largest investor-owned energy utility, serving over 1.1 million electric and more than 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.[1] In alignment with its 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.

[1] 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.

Avista Corporation ("Avista") provides electricity to 402,000 customers and natural gas to 368,000 customers across four northwestern states, including Washington.[2] Since Avista's founding in 1889, the company has served its customers with an electric generation resource mix that is more than half renewable, allowing Avista to keep its carbon emissions among the lowest in the nation. Avista also aims to serve its customers with a carbon-neutral supply of electricity by the end of 2027 and with 100% clean electricity by 2045.[3] On the gas side, Avista offers customers the option of supporting Renewable Natural Gas ("RNG"), and the company has set a goal to achieve carbon neutrality by 2045.[4] Avista is committed to reducing GHG emissions while providing customers reliable, affordable essential energy services.

The Electric Utilities recognize Ecology's diligent efforts to meet the statutory deadline for program implementation while meaningfully soliciting and considering public feedback on the Proposed Rule, and appreciate Ecology's further consideration of the following comments.

A. Mitigate the Full "Cost Burden" of Electric Utilities' CCA Compliance.

The Electric Utilities believe that full mitigation of electric utilities' cost burden for CCA compliance is both directed by the Act and critical for the success of the program. Ecology should identify the factors that should be accounted for in calculating the cost burden in the final rule for allowance allocation purposes, but allow the WUTC to approve utility forecasts that determine what the cost impact of the program will be on customers, as this is an expertise area of the WUTC. This collaborative approach leverages each agency's expertise and better effectuates the language and intent of the Act.

1. The Act dictates full mitigation of the cost burden of the program.

The intent of the Act expressly directs Ecology to limit the impact of CCA implementation on costs borne by electricity customers through the allocation of no-cost allowances:

> RCW 70A.65.010 Definitions. The definitions in this section apply throughout this chapter…
>
> (21) "Cost burden" means 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.
>
> RCW 70A.65.120 Allocation of allowances to electric utilities.
>
> (1) The legislature intends by this section to allow all consumer owned electric utilities and investor-owned electric utilities subject to the requirements of chapter 19.405 RCW, the Washington clean energy transformation act, to be eligible for

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

allowance allocation as provided in this section in order to mitigate the cost burden of the program on electricity customers.

This legislative direction recognizes that electricity customers are already bearing the costs of fully decarbonizing the electric sector under CETA. Further increasing the cost of electricity would work against the legislature's intent to help achieve Washington's climate goals through greater electrification coupled with CETA.

2. Significant program costs are not accounted for and thus cannot be mitigated.

As proposed, the Proposed Rule does not effectuate the terms of the Act. The "cost burden effect" formula articulated under WAC 173-446-230(1)(d) (Equation 230-1) does not encompass significant cost drivers. At a minimum, it should capture:

- Increased **power costs** (i.e., carbon price-based dispatch results in higher operating costs and lower wholesale market sales);[5]
- **Allowance needs** based on anticipated carbon emissions calculated with facility-specific emissions factors;
- **Administrative costs beginning immediately in 2023**; and
- Variability of **renewable resources**, including hydroelectric, wind, and solar, not normalized within the four-year compliance period.

Consideration of each of these factors is necessary to mitigate the "impact on rates or charges to customers of electric utilities… for the incremental cost of electricity service to serve load due to the compliance cost… caused by the program."[6]

If Ecology does not revise the Proposed Rule to account for changes in resource dispatch as a result of the CCA, electric customers will be forced to make up the significant and costly differences between resource dispatch now and resource dispatch after Rule implementation. Left unaddressed, electric utilities will have less money coming in (fewer in-state power sales) and more money going out (more expensive out-of-state power purchases). Based on the Proposed Rule, PSE calculates that **nearly 15% of the total cost burden** of the program will be unaccounted for, as demonstrated in Figure 1 below.[7]

[5] This impact is affected by the resulting allowance trading price, and given the wide range between the auction floor and ceiling, the financial impact could be significant.
[6] CCA, Sec. 2(21).
[7] PSE would be pleased to meet with Ecology to share the underlying data, which includes confidential business information, PSE used to come to this conclusion.

Figure 1 – Estimated Allocation of PSE Total Electric CCA Cost Burden, 2023-2026 Compliance Period[8]

Estimated allowance needs using Ecology emissions factors[9]	83.6%	*Based on modeled portfolio emissions after including CO2 cost in thermal plant dispatch*
Additional allowance needs using facility-specific emissions	1.0%	*Facility-specific emissions estimates are about 1.5% higher than emissions determined using Ecology's proposed factors*
Increased power costs	14.9%	*CO2 cost in thermal dispatch decreases wholesale market sales, increases average production cost*
Administrative costs	0.5%	
Total cost burden	100.0%	

3. Ecology should revise the factors accounted for in cost burden calculations.

To address the shortcomings in the Proposed Rule, the Electric Utilities ask Ecology to revise the "cost burden effect" formula to better capture the impacts of the adopted Rule so they can be mitigated. While the Electric Utilities strongly encourage Ecology to allow the WUTC to oversee specific utility cost burden calculations, we endorse the draft process for calculating this cost burden presented in the Joint Utilities letter.[10] The draft process is modeled after how the California Air Resources Board ("CARB") allocates allowances to electric and gas utilities (with some modifications to account for state policy differences), and would thus help promote future linkage.

Additionally, to ensure that the WUTC-approved forecasts' underlying cost burden calculations are as accurate as possible, the adopted Rule should stipulate that such forecasts should be based on facility-specific emission factors, where such information exists. Currently, under WAC 173-446-230(1)(c), the Proposed Rule applies generalized rather than facility-specific emission factors.[11] Yet, electric utilities will be using facility-specific emission factors to report the GHG emissions that will determine their covered emissions/compliance obligation. This is a meaningful disconnect, because thermal plant emission factors can vary widely depending on both age and operations, and actual Washington thermal plant emission factors mostly exceed these standard numbers. Providing an option to use facility-specific emission factors will allow forecasts to be more precise where such data is available.

With facility-specific emissions factors available and already being used in GHG reporting, there is no reason not to use them for utility-specific forecasts and allowance allocation formulas.

[8] Estimates assume normal load and average output from hydro, wind, and solar resources in each year. Actual allowance need and power cost impacts will change when these variables deviate from normal.
[9] Assumed price of emissions allowances is equal to the forecast in Appendix H.1 of Ecology's Preliminary Regulatory Analysis for Chapter 173-446 WAC.
[10] Joint Utilities, *Re: Rulemaking – Chapter 173-446 WAC, Climate Commitment Act Program Rule*, 5-9 (July 15, 2022).
[11] WAC 173-446-230(1)(c) ("(i) For generation that is projected to be served by natural gas, the factor will be 0.4354 MT CO2e/MWh. (ii) For generation that is projected to be served by coal, the factor will be 1.0614 MT CO2e/MWh, unless that generation is coal.").

As noted in the Joint Utilities letter, specificity and accuracy is especially important here, as emission factors will be considered in cost burden calculations and ultimately allowance allocation. Thus, Ecology should revise WAC 173-446-230(1)(c) to use facility-specific emission factors so that the no-cost allowance allocation is as accurate as possible. Further, where resources are unspecified, the Rule should align with the CARB unspecified market rate to avoid double counting of transmission losses and support consistency across the market.

Accurately accounting for the full CCA cost burden, which includes redispatch costs as well as compliance costs, will allow for better mitigation of the cost burden by supplying electric utilities with the appropriate no-cost allowances to cover it, thereby effectuating the CCA's intent to mitigate this cost burden for electric customers.[12] Given the potential magnitude of impacts from the Proposed Rule, the Electric Utilities would be pleased to meet with Ecology and the WUTC to discuss options for mitigating cost impacts on their customers or otherwise address questions regarding cost impacts, especially in light of the constrained timetable under which Ecology must operate to adopt these rules.

4. **Ecology should rely on CCA-specific supply forecasts and cost burdens approved by the WUTC for allowance allocations.**

The legislative intent expressed in the Act would be better fulfilled if Ecology designated the WUTC as the lead in approving CCA-specific supply forecasts and calculating cost burdens. Currently, the Proposed Rule states that Ecology will be the one to "determine how cost burden and its effect will be used to allocate allowances to each electric utility for each emissions year,"[13] rather than relying on the WUTC to provide it with this information. This approach ignores that the WUTC is uniquely supported by a long-standing and tested regulatory framework for assessing economic forecasts and utility costs.[14] The legislature counted on Ecology leveraging the WUTC's expertise as utilities' economic regulator, rather than stepping into that role itself, and embedded this expectation throughout the Act.[15]

In line with the collaborative approach envisioned in the Act, the Electric Utilities urge Ecology to revise WAC 173-446-200 to state that forecasts for electric utilities be based solely on WUTC-approved forecasts for investor-owned utilities. While Ecology has included as an option under WAC 173-446-230 for a CCA-specific forecast that has been approved by the WUTC and is also consistent with the requirements of CETA, WAC 173-446-200(1)(b) also grants Ecology full discretion to "combine information from multiple sources and use professional judgment to adjust data sets and conform to this chapter when calculating subtotal baselines." This provision introduces undue (1) uncertainty for electric utilities whose electricity forecasts and dispatch are already heavily regulated by the WUTC and (2) risk to electric customers already experiencing increasing prices due to CETA.

Under the CCA, the amount of no-cost allowances each electric utility will receive hinges on its forecasted electric load and administrative costs—matters traditionally within the purview

[12] CCA, Sec. 14(2)(b).
[13] WAC 173-446-230(1).
[14] *See, e.g.,* RCW 80.01.040(3); WAC 480-90-238; WAC 48-106-040.
[15] *See e.g.,* CCA, Sec. 14(2)(b); *see also* CCA, Secs. 10(1)(c), 14(2)(c), 14(2)(d), 14(3)(b), 15(1)(b), and 15(1)(c).

of WUTC expertise.[16] CCA Sec. 14(1)(b) clearly states that Ecology must adopt a no-cost allowance allocation schedule, in consultation with the WUTC and Department of Commerce, that is "consistent with a forecast, that is approved by the appropriate governing board or the [WUTC], of each utility's supply and demand, and the cost burden resulting from the inclusion of the covered entities in the first compliance period." Because the WUTC-approved forecast needs to include a projection of both a utility's generation mix and cost burden due to CCA compliance, this necessitates a CCA-specific process, making other forecast options inappropriate.

While the Electric Utilities appreciate Ecology's efforts to provide flexibility, the other proposed forecast options are fundamentally flawed. In particular, the Clean Energy Implementation Plan ("CEIP") timelines do not align with the CCA's four-year compliance periods, and CEIP and Integrated Resources Plans are medium- and long-term planning documents that do not reflect the detailed operational considerations that could have cost implications under the CCA. As such, we recommend that Ecology revise WAC 173-446-200 such that the forecasts for electric utilities be based solely on the aforementioned WUTC-approved, CCA-specific forecasts of electric supply and demand and cost burden, especially since approval of electricity forecasts is an area in which the WUTC already has particular expertise.

B. Reduce Uncertainty Regarding Allowance Allocations.

In order for electric utilities to effectively plan for CCA compliance and minimize customer impacts, it is essential that the process for determining and allocating no-cost allowances is straightforward and predictable. As such, the Electric Utilities offer the following recommendations to approve the allowance allocation process:

1. WAC 173-446-230(1) should true-up 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 CETA,[17] Ecology should add a provision to the Proposed Rule that grants electric utilities additional no-cost allowances from the allowance price containment reserve in the circumstance that the approved utility forecast for no-cost allowances does not match with an electric utility's actual generation mix during the compliance period.

Although forecasts will be necessary and useful as a basis to allocate initial no-cost allowance distributions, it is impossible for any forecast to have a 100% accuracy rate. Given this inevitably, the Proposed Rule should include a mechanism whereby Ecology can grant utilities additional no-cost allowances from a reserve it already has accounted for in instances where electricity demand is greater than forecasted. This will help ensure an equitable energy transition by mitigating costs for Washington electricity consumers.

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[16] *See* RCW 80.01.040(3) (stating that the WUTC shall "[r]egulate in the public interest . . . 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.").
[17] CCA, Sec. 14(2)(b).

2. **At least a portion of no-cost allowances should be provided at the outset of the program to mitigate administrative costs.**

The Electric Utilities appreciate the Proposed Rule's inclusion of a mechanism to recover administrative costs from complying with the CCA under WAC 173-446-230, but urge Ecology to provide at least a portion of these allowances for electric utilities during the first compliance period instead of waiting until the second compliance period, as utilities will incur administrative costs from CCA compliance right away. Providing these allowances at a later date will not fully mitigate the cost burden of the CCA on customers, which contradicts the intent of the CCA.[18] In contrast, providing a portion of these allowances at the outset of the program prevents the need to pass through administrative costs onto electricity customers, thereby helping to appropriately account for the full cost burden of the program.

C. Clarify Applicability of Allowance Oversight Provisions.

Ecology should revise the Proposed Rule to make clear that electric utilities have flexibility to decide how to spend revenues from consigned allowances, with oversight by the WUTC. While CCA Sec. 15(2)(b) requires that revenues from allowances sold by *gas utilities* at auction "must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers," there exists no such requirement for electric utilities.

Ecology should revise WAC 173-446-300(2)(iv) as follows:

> Revenues from allowances sold by natural gas utilities at auction must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions that include, but are not limited to, weatherization, decarbonization, conservation and efficiency services, and bill assistance. The benefits of all allowances consigned to auction by electric utilities must be used for the benefit of ratepayers, with the first priority the mitigation of any rate impacts to low-income customers.

The proposed change to WAC 173-446-300(2)(iv) appropriately gives effect to the legislature's differing treatment of gas and electric utilities in CCA Sec. 15(2)(b), and provides electric utilities with beneficial flexibility to prudently assign revenues from consigned allowances. The Electric Utilities encourage Ecology to consult with and defer to the WUTC's expertise in this regard. As mentioned above, the WUTC already oversees how utilities make investments to benefit their customers, so it is only natural that the WUTC should continue to exercise primary oversight authority in this realm.

D. Exempt From "Covered Emissions" Electricity Delivered to California.

In order to facilitate future linkage, Ecology should exempt electricity delivered to California from covered emissions, as California's cap-and-trade program already imposes a

[18] *See* CCA, Sec. 14.

carbon price on this electricity.[19] Imposing a double carbon price on the same electricity skews carbon prices and poses a linkage barrier.

Under the Proposed Rule, facilities' (including electric power plants) covered emissions include "[e]missions from the on-site combustion of natural gas, natural gas liquids, liquefied petroleum gas, compressed natural gas, or liquefied natural gas."[20] Unlike the provisions governing natural gas suppliers,[21] there is no covered emissions exemption for electricity that is exported, even when that electricity is already covered by a carbon price in the jurisdiction to which it is exported. To remedy this disparate treatment, Ecology should amend WAC 173-446-040(3)(a)(ii) as follows:

> (ii) The following GHG emissions are not covered emissions for facilities:
> (A) Emissions from the on-site combustion of any fuel product as described in WAC 173-441-122(5) except those described in (a)(i)(A), (B) or (C) of this subsection;
> (B) Carbon dioxide collected and supplied off-site that the facility owner or operator can demonstrate to ecology's satisfaction is part of the covered emissions of another covered entity under this chapter.
> (C) Emissions from the on-site combustion of any fuel product that generates electricity that is then exported to a jurisdiction that imposes a carbon price on the electricity.

E. Use More Accurate Data to Estimate Subtotal Baselines.

Ecology should use more accurate sources of data than fuel mix disclosure reports to estimate subtotal baselines for electricity importers. The fuel mix disclosure enabling statute explains that "the fuel characteristics disclosed under this chapter represent **reasonable approximations that are suitable only for informational or disclosure purposes**."[22] These reports were never intended to serve as a methodological basis for accurate GHG accounting and pricing and should not do so in the final rule.

Under WAC 173-446-200(2)(f), Ecology still proposes to use fuel mix disclosure reports generated by the Department of Commerce to estimate subtotal baselines for electricity importers. As previously emphasized in electric sector comments,[23] the fuel mix disclosure reports do not "identify and catalog all contracted power" as the Proposed Rule appears to anticipate. Additionally, these 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. Simply put, the fuel mix disclosure reports do not contain the data Ecology seems to believe that they do.

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[19] Cal. Code Regs., tit. 17, § 95852.2 ("Emissions without a Compliance Obligation") does not provide an exemption for electricity that already has a carbon price imposed on it by another state.
[20] WAC 173-446-040(3)(a)(i)(A).
[21] WAC 173-446-040(3)(b)(ii)(B) (clarifying that covered emissions for suppliers of natural gas do not include "[e]missions that would result from the combustion of fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington.").
[22] RCW 19.29A.130.
[23] *See* Joint Utilities Comments, *Re: Rulemaking – Chapter 173-446 WAC Climate Commitment Act Program*, (Jan. 26, 2022) ("Attachment A").

Instead of fuel mix disclosures, the Electric Utilities recommend that Ecology contract with a third-party to utilize existing Open Access Technology International tag data to provide the net quantity of electricity imported into balancing authority areas located entirely inside Washington for 2015-2019 emissions. For emissions associated with imports for multijurisdictional utilities, Ecology should calculate such emissions in accordance with Washington's GHG Reporting Rule or the methodology established in WAC 480-109-300 used to report emissions to the WUTC. Doing so would ensure that the subtotal baselines are as accurate as practicable.

F. Additional Comments

The Electric Utilities also note the following for Ecology's attention:

- **Clarification on reporting Renewable Energy Credits ("RECs").** The Electric Utilities interpret WAC 173-446-250(3) to mean that the purchase of RECs will cause the removal of carbon emissions from the overall allowance budget. If that is the case, then Ecology should ensure under its final rule that utilities do not have to report those net-zeroed carbon emissions due to the RECs under Washington's GHG Reporting Rule.

- **Clarification on the difference between proceeds and revenue.** The Electric Utilities request that Ecology clarify whether there exists any substantive difference between "proceeds" and "revenues" as those terms are used in the Proposed Rule.

- **Support for points affecting electric utilities raised in the Gas Utilities letter.** Finally, the Electric Utilities would like to reiterate points raised in the Gas Utilities letter that also affect electric utilities, including how (1) Ecology should not have discretion over whether to issue price ceiling units; (2) Ecology should provide no-cost allowances early on instead of by September 1, 2023; (3) Ecology should articulate detailed standards regarding the conditions under which it will remove allowances from the pool; and (4) Ecology should do everything it can to make future linkage with the Western Climate Initiative as seamless as possible, paying particular attention to points raised in the IETA white paper.

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The Electric Utilities appreciate the opportunity to engage with Ecology on these important issues. If you would like to further discuss our comments or have any questions, please reach out to Lorna Luebbe (lorna.luebbe@pse.com) and Bruce Howard (bruce.howard@avistacorp.com).

Sincerely,

/s/ Lorna Luebbe
Lorna Luebbe
Vice President of Sustainability,
Deputy General Counsel
Puget Sound Energy

/s/ Bruce Howard
Bruce Howard
Senior Director of Environmental Affairs
Avista

ATTACHMENT A

Joint Utilities Comments,
Re: Rulemaking – Chapter 173-446 WAC Climate Commitment Act Program, (Jan. 26, 2022).

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

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

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

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

  > "… the impact on rates or charges to customers of electric utilities in Washington state for the incremental cost of electricity service to serve load due to the compliance cost for greenhouse gas emissions caused by the program. Cost burden includes administrative costs from the utility's participation in the program."[2]

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

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

SPECIFIC COMMENTS

1) Allocating No-Cost Allowances to Electric Utilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Timing

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

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

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

Assumptions

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

System Variability

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

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

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

2) Price Ceiling Units

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

In the current iteration of draft rules, Ecology writes that a covered entity "must also demonstrate to Ecology's satisfaction that it tried but was unable to acquire sufficient compliance instruments to meet its compliance obligations for the immediately upcoming compliance deadline"[8] to receive price ceiling units. This requirement exceeds Ecology's authority and for the following reasons the Joint Utilities strongly recommend that it be removed from draft WAC 173-446-385 (4) and (6).

- First, Section 18 of the CCA statute does not grant Ecology the authority to limit price ceiling units in this way. Rather, the statute directly states, "In the event that no allowances remain in the allowance price containment reserve, the department *must* issue the number of price ceiling units for sale *sufficient to provide cost protection for facilities* as established under subsection (1) of this section."[9]
- Second, the requirement creates untenable uncertainty for utilities that must meet customer demand and reliably provide power. Ecology provides no guidance on what would constitute a "satisfactory demonstration" and the requirement doesn't appear to contemplate unforeseen utility operating conditions. What if an unexpected issue occurred at a renewable generation plant or key transmission lines such that a utility required more GHG emitting generation than expected to meet demand?
- Third, such a requirement intrudes on the purview of the Joint Utilities' respective regulatory and governing bodies by effectively creating a duplicative review of utilities' resource decisions. Our economic regulators and governing bodies routinely review utility operations for prudence, and such processes are governed by rigorous regulatory regimes that safeguard against mismanagement.

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

[8] WAC 173-446-385

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

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

3) Allowance Adjustments

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

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

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

4) Initial Auction

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

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

5) **Calculation of the Electric Sector Baseline**
Ecology's proposed data source for imported electricity in the baseline does not align with the point of regulation.

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

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

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

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

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

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

The Joint Utilities believe the methodology for establishing the subtotal baselines should attempt to align with the point at which a compliance obligation is applied and with the methodology that determines compliance with the requirements of the cap-and-invest program. Failure to align the baseline and compliance assessment methodology will result in an inaccurate picture of the state's historical emissions and impact the state's ability to accurately represent progress toward emission reduction targets. The Joint Utilities suggest that, instead of using the fuel mix disclosure reports, Ecology could acquire better-aligned baseline data by:

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

6) Emission Factors

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

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

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

7) Banking of Allowances

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

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

8) Treatment of Voluntary Programs

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

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

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

CONCLUSION

In summary, as Ecology develops rules for the CCA program that impact electric utility operations and our customers, the agency must be guided by statutory direction around linkage, cost burden,

and consultation with utility regulators. The Joint Utilities are engaged together in a highly collaborative process and are committed to investing the resources needed to work with Ecology to ensure the electric sector meets its proportionate share of emissions reduction objectives. Despite the tight deadline in which Ecology and covered entities must implement this program, the Joint Utilities believe additional collaboration and consultation between Ecology, the state's utilities, and regulators is necessary to design a framework that achieves the program goals, aligns with statutory direction, and displays stewardship of Washington utility customers' dollars.

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

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

Sincerely,

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