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Attn: Camille Sultana
Washington Department of Ecology
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RE: Avista Comments in Response to the Department of Ecology's Climate Commitment Act No-Cost Allowance Allocation for Electric Utilities Rulemaking

Avista Corporation, d/b/a Avista Utilities (Avista or the Company), submits the following comments pertaining to Washington State Department of Ecology's (Ecology) rulemaking on No-Cost Allowance Allocation for Electric Utilities under the Climate Commitment Act (CCA). Avista appreciates the opportunity to continue engaging with Ecology on critical issues such as these. We value the work Ecology is doing and would like to reiterate the importance of Ecology's decisions and the outcomes those decisions have.

Consignment Requirements

- ***Are there benefits or disadvantages of consignment of no-cost allowances?***
- ***Should utilities be required to consign a specified amount of no-cost allowances?***
- ***Should any potential rules regarding consignment requirements be applied across all utilities?***

The benefits of requiring consignment of allowances remain unclear. While one potential advantage is the generation of revenue that could be used to subsidize low-income electric customers there are other requirements for utilities. More specifically, investor-owned electric utilities that provide energy assistance to low-income customers serve as an alternative to the use of proceeds from consigned allowances to aid low-income customers. There are other requirements for utilities to provide energy assistance to low-income customers. For example, the Clean Energy Transformation Act (CETA) requires utilities to demonstrate the equitable transition to clean energy, which includes affordability. CETA contains aspirational goals for energy assistance saturation, 60% by 2030 and 90% by 2050. Electric utilities are generally required under RCW 19.405.120 to "demonstrate progress in providing energy assistance" with "priority given to low-income customers with a higher energy burden. In addition, RCW 80.28.425 requires investor-owned utilities to "recover from ratepayers up to five percent of the total revenue requirement approved by the [WUTC] for each year of a multiyear rate plan for tariffs that reduce the energy burden of low-income residential customers."

It is noteworthy that these bill assistance and discount mechanisms are subsidized by utility customers.

Some stakeholders may argue that consignment would create an additional pool of funds for energy assistance programs, particularly in cases where other funding sources are exhausted, however, this potential benefit must be weighed against the practical limitations and cost implications of consignment. In contrast, using allowances directly to offset power plant emission obligations would avoid administrative expenses and ensure efficient, least-cost, use of resources to the benefit of customers.

If the department is contemplating requiring consignment of all, or a portion of the no-cost allowances that are allocated to electric utilities, it should consider the following factors that can affect the cost burden of the program on customers:

The addition of allowance costs, which are projected to increase over time, in the dispatch of thermal generation owned by electric utilities, will reduce wholesale transaction revenues that offset costs otherwise borne by retail customers.

Emission forecasts performed under RCW 70A.65.120, which establish the basis for cost burden that will be borne by customers, cannot accurately predict future hydropower production, as it is weather dependent, meaning that a succession of low-water years exposes hydro-dependent electric utilities to the wholesale market and a greater need to purchase allowances to maintain system reliability. This program will become more acute as the number of allowances allocated at no-cost to electric utilities, diminish over time. The effect of these circumstances is to effectively punish retail electric consumers who today are served with a form of emission-free electricity. It also underscores not only the merits of continuing to allocate no-cost allowances that can be used for compliance, but also the need to preserve four-year compliance periods.

Electrification of the building and transportation sector along with the addition of data center loads, will increase the complexity for electric utilities to meet their obligations under CETA and the Climate Commitment Act (CCA). Significant load increases will escalate competition for the development and acquisition of new renewable resources and transmission capacity and make efforts to meet reliability adequacy metrics (potential obligations), much more challenging. Depending on how CETA and CCA obligations might be applied or allocated to accommodate the addition of large new electric loads, electric utilities will incur additional compliance obligations and their customers will experience higher rates. This outcome necessitates Ecology consider and carefully review how no-cost allowances should be allocated for the second compliance period (and beyond). More specifically, under the directive RCW 70A.65.120(7), Ecology is required to adopt rules establishing a basis for allocating allowances that "must consider the impact of electrification of buildings, transportation, and industry on the electricity sector."
The customer cost implications of reducing the amount of no-cost allowances that can be used for compliance, should also be considered in the context of other unavoidable factors that are causing and will continue to drive increases in customer bills, such as : (1) Investments that electric utilities must make to maintain their physical assets (i.e., upgrading old generation, distribution, and transmission infrastructure; acquiring equipment for cybersecurity; and improving security of

physical plant); (2) investments in enhancing electric system resilience (i.e., system hardening against wildfire threats; and wildfire mitigation measures); (3) investment in measures to comply with regulatory obligations, such as enhancing system capacity to accommodate the effect of electrification policies and CETA, and hiring personnel to oversee compliance; and (4) events that affect inflation, supply chain integrity, credits ratings, taxes and fees.

Ecology's own statements in the State's Brief in Opposition to Invenergy's Petition for Writ of Certiorari to the U.S. Supreme Court in Invenergy v. Washington (No. 24-1027), reinforce the importance of construing the meaning of "mitigation" of cost burden in the broadest extent possible. As the department's Brief states: "Because Washington consumers are already paying for the cost of decarbonizing Washington's retail energy sector, the Climate Commitment Act provides that all electric utilities subject to the Clean Energy Transformation Act are eligible for no-cost allowances 'in order to mitigate the cost burden of the [Climate Commitment Act] on electricity customers.'" The department's legal argument affirms the Legislature's intent to have no-cost allowances allocated for the purpose of shielding customers – particularly low-income households – from additional financial burdens. As allowance quantities decline and compliance costs rise, adjustments made under WAC 173-446-230(2)(g) become essential to uphold this intent and prevent disproportionate impacts on vulnerable communities, as well as on all other retail electric customers.

Ecology's affirmation that customers can bear the costs of two regulatory programs (CETA and CCA) and that "mitigation" is warranted under the circumstances ,raises an important question that Ecology has yet to address as it should have when contemplating consignment. What does it mean to "mitigate" the cost burden; in other words, what is the standard for determining sufficient "mitigation," especially given that investor-owned utilities, in particular, are not similarly situated. Absence of a standard can lead to arbitrary and capricious regulatory decisions.

It is also worth noting that implementing a consignment methodology for allocating allowances to electric utilities for the second compliance period, would necessitate extensive rulemaking and regulatory processes to define how the resulting funds are spent, adding further complexity and cost. Importantly, there is no compelling need to consign allowances to preserve carbon pricing signals, rather they can be maintained through existing mechanisms without imposing additional burdens on utilities or their customers – and we can anticipate that once Washington links its program with California's, the California segment of the market will drive allowance prices with little to no influence on it as a result of Washington's approach to allocating allowances.

Consigned Allowances, Use of Proceeds

- ***Do utilities have questions on use of proceeds from consigned allowances consistent with RCW 70A.65.120(4)?***
    - ***Would guidance be valuable on this topic?***
    - ***Would information sharing of utility use of proceeds examples be helpful?***

Requiring utilities to consign allowances to auction would violate the intent of RCW 70A.65.120(1), which is to mitigate the cost burden of the program on electricity customers. Currently, the quantity of allowances allocated to Avista is insufficient even to cover operations permitted under CETA. As a result, the existing allocations are inadequate not only to mitigate the cost burden but also to allow for any meaningful reductions through consignment. Recognizing this, Avista has chosen not to consign any allowances to auction, as doing so would only exacerbate the financial burden on its customers.

Moreover, consignment would undermine the cost mitigation goals envisioned by the law and should therefore not be permitted. As discussed in RCW 70A.65.120(1)(d), this subsection explicitly prohibits Ecology from requiring electric utilities to consign allowances that could otherwise be used to meet compliance obligations for emissions associated with CETA-compliant resources. This provision affirms that utilities may use allowances for compliance equal to their covered emissions in any calendar year in which they were not subject to potential penalties under RCW 19.405.090.

Key provisions of RCW 70A.65.120 further reinforce this intent. Subsection 2(a) requires that rules account for the cost burden of the program on electricity customers. Subsection 2(b) mandates that allowance allocations be consistent with a forecast—approved by the appropriate governing board or the Utilities and Transportation Commission—of each utility's supply and demand, as well as the resulting cost burden during the first compliance period. These statutory requirements underscore the importance of preserving allowance allocations for direct compliance use, rather than diverting them through consignment mechanisms that would increase costs and administrative complexity.

Utilities have expressed a need for clearer guidance as it relates to using consigned allowance proceeds, as outlined in RCW 70A.65.120(4). Specifically, IOUs would benefit from direction provided by the Washington Utilities and Transportation Commission (WUTC), like the guidance offered to natural gas companies. One area where additional clarity would be particularly helpful, is in the identification of low-income customers. To ensure equitable distribution of benefits, any proceeds from consigned allowances should be directed exclusively to customers who are formally identified as low-income. Furthermore, utilities would find it valuable to share examples of how proceeds have been used across the sector, which could foster consistency and transparency in implementation.

- ***How could no-cost allowances be used to maximize ratepayer benefit and support achievement of state emission limits?***
- ***How could use of proceeds from consigned allowances be applied specifically to protect low-income ratepayers and overburdened communities?***

Any consideration of allowance consignment after 2026, should only occur following a modification of Ecology's allowance forecast methodology to fully account for all compliance obligations under WAC 173-441. This statute (RCW 70A.65.120(1)(d)) directs Ecology to adopt rules regarding the amount of no-cost allowances that must be consigned during the second compliance period. Importantly, this value could be set at a minimum of zero, allowing utilities the discretion to decide whether or not to consign allowances.

No-cost allowances should continue to be used for compliance purposes unless a utility has surplus allowances resulting from additional decarbonization efforts. In such cases, utilities may choose to consign the excess allowances for the benefit of their customers. However, requiring consignment would impose a cost burden on non-low-income customers, which would be inequitable.

While proceeds from consigned allowances may offer temporary benefits for low-income customers, these benefits are inherently limited. As allowance prices rise and allocations decline—particularly under a fully consigned regime—the gap between available proceeds and actual compliance costs, will widen. Eventually, this delta will result in low-income customers bearing a portion of the compliance burden, contrary to the intent of the CCA. Moreover, administrative costs associated with consignment further erode the value of allowances that could otherwise be used directly for compliance. The only meaningful way to reduce compliance costs is through investments in clean generation, load management, and energy efficiency—initiatives driven by CETA. These investments, however, impact rates across all customer classes and cannot be offset by consignment proceeds. While utilities are required to invest in low-income energy assistance under a multi-year rate plan, this support is funded by other customers, meaning non-low-income customers will shoulder the majority of both CETA and CCA-related costs. This dynamic underscores the importance of preserving direct compliance use of allowances and enabling adjustments under WAC 173-446-230(2)(g) to ensure equitable cost distribution.

As mentioned above, CETA already establishes goals for energy assistance and ensures an equitable transition to clean energy through affordability measures. Therefore, low-income customers should not receive a net benefit from consigned allowances when CCA allowance grants presently are inadequate to meet utility CCA compliance obligations and when low-income customers already are being equitably supported under CETA. Additional revenues to benefit low-income customers would therefore come only at the expense of other customers. Instead of relying on electric customers to subsidize low-income households through consignment, the state should utilize auction revenues to address equity considerations more broadly and effectively.

Compliance Period Forecast

- ***Do entities foresee hurdles to having a 2nd compliance period forecast consistent with WAC 173-446-230(2) no later than September 1, 2026?***
- ***Ecology may publish guidance to support consistency of utilized forecasts, including treatment of storage, demand response, and distributed resources and energy efficiency programs.***
- ***Are there other topics Ecology should address in guidance?***
- ***By when should guidance be provided to be useful in utility processes?***
- ***Should Ecology pursue rule amendments for 2nd compliance period allocation to further support certainty and decarbonization incentives? For example, an approach that relies on a defined allocation schedule for a compliance period, with no or limited ability for revision or adjustment.***

Retail electric load should not serve as the sole basis for forecasting allowance allocations. While the proposed timeline for submitting forecasts is reasonable, Ecology should consider requiring updates to forecasts annually. More importantly, the forecasting methodology itself needs to be revised to ensure utilities receive sufficient allowances to cover their actual compliance obligations that drive the cost burden to the utility and its customers.

Avista appreciates Ecology's acknowledgment that a utility's compliance obligation may differ from the value determined by the current cost burden forecasting methodology. This recognition underscores a fundamental flaw in the existing approach, which must be corrected. The current methodology violates Ecology's own rule in WAC 173-446-230(1), which states that "allowances will be allocated to qualifying electric utilities for the purposes of mitigating the cost burden of the program based on the cost burden effect of the program." To align with this rule and legislative intent, the forecast should reflect the full scope of utility operations and compliance obligations, not just the emissions measured by MWhs of retail electric load.

Allowance Allocation and Adjustments

Avista reiterates that allowance allocations should be based on a forecast of the utility's overall cost burden, rather than being tied solely to direct retail load energy. Ecology's decision to tie allowance allocations to retail electric load violates RCW 70.65A, which references supply and demand—not retail load—as the basis for allocation. The only mention of retail electric load in the statute pertains to allocating specific facilities toward retail load service (RCW 70A.65.010(42)(e)). Therefore, rules should be applied consistently across all utilities, particularly regarding the allocation of allowances and subsequent adjustments.

The current proposal to apply a 15% divergence threshold for adjustments is problematic and should be eliminated. For context, 15% of Avista's 2024 allowance quantity equates to approximately 250,000 allowances. At an estimated value of $60 per allowance, this threshold could result in a cost impact to Avista's customers of $15 million—a significant financial burden.

Performance deviations, whether under- or over-forecasted, are often driven by factors outside of a utility's control, such as hydroelectric conditions or market price fluctuations. Therefore, considerations should be made for both surplus and shortage scenarios, not just for shortages. Allowance surpluses at one entity can help offset deficits at another, promoting fairness and balance across the sector.

It is also important to clarify that updating or revisiting forecasts for the current year (e.g., revising the 2025 forecast during 2025) should be unnecessary, as the adjustment process already defined in 173.446.230(2)(g), should account for the difference between forecasted and actual values. Avista believes these adjustments should be automatic, with an additional opportunity for utilities to request further modifications if needed. Avista understands that the WUTC expects that utilities will receive no-cost allowances sufficient to cover 100 percent of their retail load, reinforcing the need for a more accurate and responsive allocation methodology.

Avista acknowledges and supports the state's goal of achieving significant carbon emissions reductions and transitioning electric utilities to 100 percent clean electricity by 2045. However, it is important to recognize that CETA is the appropriate legislative framework for driving decarbonization within utility portfolios. The CCA, by contrast, was not designed to accelerate electric utility decarbonization.

Within the current program, utilities and their customers have already experienced cost burdens that conflict with the intent of the law. Administrative costs have not been adequately recovered through the allowances mandated by statute, and emissions have not been properly accounted for due to flaws in Ecology's forecasting methodology. Although Ecology acknowledges the need for additional allowances to cover administrative burdens in WAC 173-446-230(2)(h), this need is not reflected in the current cost burden forecast. Moreover, the load defined in Equation 230-1 is not a suitable proxy for cost burden. To align with the intent of the RCW, the forecasting methodology should mirror the full scope of allowance obligations under WAC 173-441, rather than a limited subset.

Finally, the guidance suggesting that allowance allocations should "preserve decarbonization and emission reduction incentives" is not appropriate in the context of electric utilities, as CETA—not CCA—is the designated pathway for utility decarbonization. Sector-wide statistics fail to account for the differences between reporting entities, and allowance grants should not fall short of operational needs due to administrative burdens. Avista remains short of allowances for the 2023 compliance period. Preserving the link between allocation and cumulative cost burden is essential, and Ecology's past and current decisions continue to conflict with legislative intent.

Allowance Allocation Timing

In terms of allocation timing, Ecology should clearly define its methodology and schedule for allowance allocation adjustments, as outlined in WAC 173-446.230(2)(g). Implementing this rule is essential for mitigating utility cost burdens. Affording utilities the opportunity to adjust their allowance needs through this rule is especially critical given that Ecology's current forecast methodology does not fully account for the operational realities and business impacts faced by electric utilities. Again, for clarity: WAC 173-446-120(2)(g) defines a process for reconciling differences between the emissions obligations under WAC 173-441 and the forecast used in WAC 173-446-120. The emissions obligations under WAC 173-441, encompass all emissions associated with serving retail customers, not just those tied to direct load service. It is disappointing that Avista has been denied the allowance adjustment which is clearly stated in Ecology's own rules.

Administrative Costs

There is no dispute that compliance with the CCA imposes a significant administrative burden. The law provides for allowances to cover these costs, and Ecology must ensure that all administrative expenses—regardless of when they are incurred—are covered. Failure to do so shifts a cost burden onto electric customers, contrary to statute. Ecology should develop a practical and equitable methodology to compensate utilities for these costs and avoid creating a financial burden on utility customers simply because it has yet to identify a suitable approach.

Avista greatly values the opportunity to provide input on this rulemaking and appreciates the engagement from Ecology staff. We look forward to continuing these important conversations to ensure successful implementation of the program. If you have any questions regarding these comments, you can contact Janna Loeppky, Clean Energy Policy & Implementation Manager, at 509-495-8809 or janna.loeppky@avistacorp.com.

Sincerely,

/s/ Signed by:
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