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Submitted via Web Portal

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RE: Cap-and-Invest: No-Cost Allowance Allocation for Electric Utilities

On November 13, 2025, the Washington Department of Ecology (Ecology) hosted a workshop on no-cost allowance allocation for electric utilities under the Cap-and-Invest Program. The Public Generating Pool (PGP) is a trade association representing eight consumer-owned utilities in Washington and one in Oregon that own and operate their own generating resources. PGP respectfully offers the following comments on areas of requested feedback outlined at the November 13th Cap-and-Invest workshop.

Allocation Design

At the November 13th workshop, Ecology staff put forth an initial concept with respect to potential rule updates pertaining to no-cost allowance allocation design for the second compliance period. Under this initial concept, Ecology would:

- **Publish the vintage 2027-2030 allocation schedule in October 2026.**
  - The published October 2026 schedule would determine allowance distributions except for certain prescribed adjustments.
  - There may be potential for small modifications to the allocation calculation approach to strengthen cost burden mitigation for Washington communities.
- **Repeal current WAC 173-446-230(2)(g) and replace it with a backwards-looking adjustment only applicable in specified circumstances.** Consideration of adjustments accounting for previous calendar years would be limited to instances of:
  - Misleading forecasts of retail load or resource supply used to meet retail load that were not reflective of best estimates at the time.
  - Divergence from retail load of over 15% resulting in cumulative allocation significantly diverging from cost burden.
  - Per request of utilities.
- **Repeal the July 30th revised forecast provision in WAC 173-446-230(2)(j).**
- **Potentially add modifications to the allocation calculation.**

- Ecology is proposing to adopt the minimum 5% unspecified assumption already implemented in the allocation calculation.
- Ecology is considering applying a small upwards adjustment to all best-estimate forecasts of retail load to mitigate additional load growth.
- For purposes of allocation, Ecology is considering applying a default Bonneville Power Administration (BPA) Asset-Controlling Supplier (ACS) emission factor of 0.05 MTCO2e/MWh for the vintage 2027-2030 allocation schedule.

In addition to previous comments offered in our May 2, 2025,[1] and August 15, 2025,[2] comment letters on utility allocation topics, PGP offers the following comments and requests for clarification on certain elements of the initial concept for allocation design for the second compliance period:

- **Misleading Forecasts -** While PGP understands the premise and need for allocation adjustments to account for any misleading forecasts, PGP has some concern that in practice it may be challenging to distinguish a forecast that is simply based on outdated or erroneous inputs from one that is deliberately misleading. In prior comments, PGP has requested that Ecology clarify some objective criteria by which Ecology would determine whether misrepresentation of utility forecasts is suspected to have occurred. In addition, PGP is interested in further explanation from Ecology as to how any additional rule language around misleading forecasts would differ from or clarify the current requirement in WAC 173-446-230(2)(a) and (b) that utility-specific demand and resource supply forecasts "represent the best estimate" of the most likely electricity demand and resource mix scenarios during the applicable compliance period. Presumably, a deliberately misleading forecast would violate this requirement. Rather than use the term "misleading forecast" in rule, Ecology could consider enabling adjustments for forecasts that are ultimately found to have been an intentional misrepresentation of the demand and resource mix at the time. PGP also recommends that Ecology clearly articulate a procedural component to this portion of the draft rules whereby utilities are offered an opportunity to present evidence rebutting any preliminary findings of a misleading forecast prior to being subject to an allowance adjustment.
- **Retail Load Divergence -** PGP requests clarification as to whether the 15% retail load divergence threshold for possible allocation adjustment would work in both positive (15% above previously forecast) and negative (15% below previously forecast) directions. PGP also reiterates our previous request that Ecology clarify that the adjustment would be based on forecast vs. actual retail load for the prior year.

[1] Public Generating Pool. May 2, 2025. RE: Cap-and-Invest: No-Cost Allowance Allocation for Electric Utilities. Retrieved from: https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did200118/pid_210883/assets/merged/220gihr5smf_document.pdf?v=34068.

[2] Public Generating Pool. August 15, 2025. RE: Cap-and-Invest: No-Cost Allowance Allocation for Electric Utilities. Retrieved from: https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did200118/pid_210883/assets/merged/v307i1sli6s_document.pdf?v=25080.

- **Repeal of July 30th Revised Forecast Provision in WAC 173-446-230(2)(j) –** If the provision in WAC 173-446-230(2)(j) is removed, PGP requests that Ecology continue to accept revised forward-looking forecasts of demand and/or resource supply under the "per request of utilities" adjustment consideration proposed for WAC 173-446-230(2)(g). Without this option, PGP is concerned that there would be limited opportunities to account for unforeseen circumstances within a compliance period. PGP sees value for both Ecology and utilities in having some mechanism available for forward-looking adjustments.
- **Default BPA ACS Emissions Factor -** PGP requests confirmation that allocation schedules using a default BPA ACS emission factor of 0.05 MTCO2e/MWh will be adjusted by Ecology if BPA's actual reported ACS EF significantly changes. PGP's preferred approach is that the default BPA ACS emission factor would be a "placeholder" that will be annually adjusted based on BPA's actual, approved ACS emission factor for a given data year, consistent with Ecology's current practice.
- **Potential Modifications to the Allocation Calculation –** PGP supports Ecology's proposal to codify the currently-implemented minimum 5% unspecified assumption in the "cost burden effect" equation adopted by rule. This approach is consistent with PGP's and the Joint Utilities' July 15, 2022, recommendation for an "operational adjustment" of 5% unspecified energy to account for balancing purchases that carry Cap-and-Invest compliance obligations.[3] PGP also supports Ecology applying a small upwards adjustment to all best-estimate forecasts of retail load to mitigate additional load growth.
- **"Prescribed Adjustments" –** PGP understands the reference to "prescribed adjustments" on Slide 26 of Ecology's presentation materials for the November 13th workshop as referring to those that are currently described in Ecology's workpapers supporting its annual allocation schedule revisions—namely, any updated forecast information from utilities and the inclusion of BPA's updated ACS emissions factor for the upcoming year. PGP requests that Ecology confirm or correct our understanding.

Administrative Allocation

As expressed in our previous comment letters, PGP appreciates and supports Ecology's proposal to develop a "calculated method" for allocation of no-cost allowances to mitigate administrative costs incurred from utility participation in the Cap-and-Invest Program. At the November 13th workshop, Ecology staff shared two draft concepts for implementing such a calculated method. At this time, PGP does not have a strong preference between the two draft concepts. PGP appreciates and supports Ecology's indication that for either concept, Ecology is considering mechanisms to enable the allocation provided in October 2026 to mitigate first compliance period administrative

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[3] Avista, Northwest Requirements Utilities, PacifiCorp, Public Generating Pool, Puget Sound Energy, WA Public Utility Districts Association ("Joint Utilities"). July 15, 2022. RE: Rulemaking – Chapter 173-446 WAC, Climate Commitment Act Program Rule. Retrieved from: https://static1.squarespace.com/static/5e9fc98ab8d9586057ba8496/t/63373ddc347fb1202d5195fb/1664564702150/Joint+Utility+CCA+Program+Rule+Comment+Package.pdf.

costs to be applied to first compliance period obligations. Such an approach aligns with the Legislature's clear intent of incorporating administrative costs in the statutory definition of "cost burden." To that end, PGP recommends that Ecology allocate vintage 2023-2026 allowances for administrative costs from the pool of allowances that will become available due to HB 1975's (Fitzgibbon, 2025) clarification that annual allowance budgets be set to achieve the 2030, 2040, and 2050 statewide emissions limits by December 31st of each of those years.

<u>Use of No-Cost Allowances – Consignment Requirements</u>

At the November 13th workshop, Ecology staff expressed that for no-cost allowances not associated with the supply of BPA system power, Ecology is considering requiring consignment of 50% of provided vintage 2027-2030 allowances and an increased percentage for 2031 and beyond. Ecology staff noted that Ecology would provide exceptions to allow utilities to use no-cost allowances for direct compliance as required in statute, and would clarify existing rules specifying that no-cost allowances may be used for the utility's direct compliance, consignment, or transfer to BPA. With respect to this potential concept, PGP respectfully offers the following comments.

<u>Second Compliance Period: Vintage 2027-2030</u>

Consistent with PGP's August 15, 2025, comment letter on utility allocation topics, PGP recommends that Ecology not establish a minimum consignment requirement for the second compliance period. PGP believes that such an approach would be consistent with the statutory direction provided in the CCA. Specifically, RCW 70A.65.120(3)(b) provides that:

> "*By October 1, 2026, the department, in consultation with the department of commerce and the utilities and transportation commission, must adopt rules governing **the amount** of allowances allocated at no cost* [for the second compliance period] *that must be consigned to auction. For calendar year 2030, electric utilities may use allowances for compliance equal to their covered emissions if not subject to potential penalty under RCW 19.405.090.*" [**Emphasis added.**]

Conceivably, Ecology has the discretion to adopt rules specifying that the "amount" referenced in the provision cited above is "zero." PGP believes that more discussion and analysis is needed to determine whether required consignment will actually drive the desired economic and policy outcomes cited at Ecology's November 13th workshop. PGP recommends that Ecology utilize the 2027-2029 time period to facilitate such discussion and analysis and craft a mutually beneficial approach to required consignment beginning in the third compliance period.

If Ecology does decide to pursue a minimum consignment requirement for the second compliance period, PGP recommends that Ecology's rules allow for utility use of no-cost allowances for direct compliance in calendar years 2027, 2028, and 2029. RCWs 70A.65.120(2)(d) and (3)(b) provide that if Ecology adopts a minimum consignment requirement, Ecology's rules must still allow utilities to use no-cost allowances for compliance equal to their covered emissions in any calendar year from 2030 through 2045 if not subject to potential penalty under the Clean Energy Transformation Act (CETA). While the CCA statute explicitly allows utilities to use no-cost allowances for direct compliance in years falling within 2030-2045, PGP strongly encourages Ecology to interpret the statute as *not precluding* rules allowing for utility use of no-cost allowances for direct compliance for calendar years 2027, 2028, and 2029. While utilities would not be subject to potential penalty under CETA until after 2030, they do have to establish interim targets for and demonstrate progress towards achieving the 2030 Greenhouse Gas Neutral standard in their Clean Energy Implementation Plans (CEIP) during the 2026-2029 interim performance period. PGP believes that allowing no-cost allowances to be used for direct compliance for calendar years 2027, 2028, and 2029 is consistent with the Legislative intent of allowance allocation for electric utilities under the CCA.

<u>Third Compliance Period & Beyond</u>

RCW 70A.65.120(2)(d) provides that Ecology "may"—not "must"—prescribe an amount of allowances allocated at no cost that must be consigned to auction for the compliance periods contained within calendar years 2031-2045. Further, the statute provides that Ecology's rules must still allow utilities to use allowances for compliance equal to their covered emissions in any calendar year they were not subject to potential penalty under CETA. If, after facilitating the discussion and analysis recommended above, Ecology decides to implement a minimum consignment requirement beginning in the third compliance period, PGP recommends that Ecology's approach:

- **Clarify the treatment of no-cost allowances "associated with the supply of BPA system power."** Specifically, the approach should clarify whether this includes both specified (ACS) and unspecified BPA system power. PGP also requests that Ecology's rules include allowable uses of no-cost allowances by electric utilities under both: (1) The status quo, where BPA has not opted into the Cap-and-Invest Program; and (2) in the event that BPA opts into the program. If BPA does opt into the program, utilities would be expected to have the option to transfer allowances to BPA under the terms of their Provider of Choice contracts. If BPA does not opt into the program, utilities will need to reserve sufficient allowances to meet the compliance obligations associated with their share of BPA system power.
- **Should not require utilities to consign allowances before direct compliance obligations are known for a given calendar year.** Required consignment calculations should be based on a utility's actual direct compliance obligations, rather than on a forecast or baseline emissions approach.
- **Should calculate utility consignment requirements based on allocated allowances in excess of 100% of a utility's total direct compliance obligation for a given calendar year (CY), rather than in excess of its 30% annual compliance obligations.** Ecology should also communicate a utility's expected consignment requirement for a CY only after the

associated annual compliance event (CY+1). Utilities should not be put in a position of potential shortfall because they have been required to consign allowances and did not have sufficient allowances to cover their direct compliance obligations for a given compliance event.

- **Should clearly articulate the deadline by which a utility would be expected to consign 50% of its excess allowances for a given CY.** Ecology's approach should also be mindful of the fact that the timing of a consignment deadline becomes much more complicated for the last calendar year of a compliance period, especially given Ecology's 75-day consignment notice requirement.

Allocation Forecast Details: v2027-2030

With respect to Ecology's initial concept for 2027-2030 forecast development, PGP does not currently have a concern with Ecology's request that specific forecasts beyond what is available in utility IRPs, CEIPs, and BPA forecasting be submitted no later than July 30, 2026. However, PGP respectfully requests clarification as to whether IRPs used to inform allowance allocation for the second compliance period need to be approved by July 30, 2026, and if so, whether Ecology would allow allocation schedule revisions in the event that a utility's next IRP update is not available until after that date. In terms of the timing of allocation schedule publication for 2027-2030, PGP strongly supports Ecology publishing a draft of the allocation schedule using available data prior to October 1, 2026.

PGP supports Ecology's proposed clarifying updates to the definition of "retail load" and the related proposal for initial forecast guidance. Our one technical note for Ecology's consideration is that under the federal Public Utility Regulatory Policies Act, a "qualifying facility" could include a fossil-fueled generating facility.

Conclusion

PGP appreciates the opportunity to offer feedback on Ecology's implementation of no-cost allowance allocation for electric utilities under the Cap-and-Invest Program. We look forward to continuing to engage with Ecology on these issues.

Sincerely,

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