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December 5th, 2025

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RE: Joint Utility Comments in Response to the Department of Ecology's Cap-and-Invest: No-Cost Allowance Allocation for Electric Utilities Rulemaking

Avista Corporation, d/b/a Avista Utilities (Avista), Puget Sound Energy, Inc. (PSE) and PacificCorp, d/b/a Pacific Power (PAC), collectively the Utilities, submit the following comments pertaining to Washington State Department of Ecology's (Ecology) proposed rulemaking workshop on November 14th, 2025.

The undersigned Utilities have two overarching concerns with Ecology's current rulemaking proposals, relative to no cost allowances for electric utilities. First, Ecology's proposals fail to remedy existing regulatory intricacies related to the no-cost allowance allocation process and will instead lead to increased regulatory complexity and inefficiency. Second, Ecology is proposing rules that veer beyond the scope of its authority, proposing regulations in areas that are well within and better managed under the jurisdiction of the Washington Utilities and Transportation Commission (UTC).

The construct of the Climate Commitment Act (CCA), as enacted by the Legislature, was not intended to be identical to California's carbon trading program, which has evolved in different ways, on different timelines and under a different economic and regulatory backdrop. California and Washington are both unique in their own right; their energy mix, climate and available resources, are specific to their regions, and the structure of California's electric utility industry is fundamentally different from that in Washington. Although the Utilities fully support linking Washington's carbon market to that of California and Quebec, the management of no-cost allowances, and the decision whether to require the electric utilities to consign no-cost allowances, is within Ecology's discretion and will not jeopardize linkage. Given the differences between Washington and California, it is inappropriate for Ecology to summarily apply the features of California's program to the CCA.

While the CCA and Clean Energy Transformation Act (CETA) operate alongside each other, the methods and instruments electric utilities use to demonstrate compliance under CETA are distinct from those used for compliance with CCA. CETA is a procurement-based standard that uses generation and environmental attributes (such as Renewable Energy Credits) to demonstrate compliance. The CCA is an emissions-based compliance system that uses carbon credit/allowances which are not recognized as a compliance instrument under CETA. The proposed rule changes put forth by Ecology, would create a scenario where electric utilities would have to invest in separate compliance instruments for the same emissions to meet the requirements of both laws. Subsequently, this would result in double-regulation of the same emissions. This is untenable and not in line with the overall guiding purpose of an effective Cap-and-Invest program. CETA remains the chief policy driving emissions reductions in the electric utility sector. The architects of the CCA, which was enacted two years after CETA, recognized this and drafted provisions to avoid CCA cost impacts to electric utility customers. This is why the law requires no cost allowance allocation to mitigate the cost burden on electric utilities, including the administrative cost of CCA compliance.

The CCA is not the instrument the Legislature intended to drive electric utility decarbonization – CETA was already in place and sets forth the path for emissions reductions in this sector. CETA is a purposefully designed clean energy program that is intended to be sensitive to cost and critical reliability metrics. The provisions of the CCA were crafted to complement Washington's existing regulatory landscape and meet the unique conditions of Washington's economy and energy sector. Ecology has acknowledged the primacy of CETA over the CCA as Washington's electricity sector decarbonization law in its Brief in Opposition to Invenergy Thermal LLC and Grays Harbor LLC's Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in Invenergy Thermal LLC and Grays Harbor Energy LLC v. Casey Sixkiller (No. 24-1027). In its filing, Ecology stated: "The Legislature in the Climate Commitment Act chose to grant 'no cost' allowances to electric utilities." The Legislature's reason for doing so is clear: a separate statute adopted several years before the Climate Commitment Act (the Washington Clean Energy Transformation Act) already requires Washington utilities to rid their portfolios of fossil fuel power by 2045 (Wash. Rev. Code s. 19.405.010(2)). Because Washington consumers are already paying for the cost of decarbonizing Washington's retail energy sector, the Climate Commitment Act provided 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.' (Wash. Rev. Code 70A. 65.120(1)(See page 5)). In short, Ecology is aware of the legislative intent that CETA, and not the CCA, functions to drive emission reductions in the electricity sector and that it has attendant costs that will be borne by customers. Yet, throughout this rulemaking and in the implementation of the CCA, Ecology has ignored the clear primacy of CETA and inappropriately inflated the role of the CCA in the electric sector, to the detriment of Washington electric customers and without any environmental benefit. Instead, Ecology must implement the CCA in a manner consistent with the intent of the Washington Legislature by issuing no-cost allowances directly to fully cover electric system compliance obligations on behalf of customers. Given the primacy of CETA, this is the most cost-effective way to achieve these legislative goals.

Many of the proposed rule changes outlined in the November 14th workshop are not authorized in statute and thus result in a gross deficiency in cost mitigation required by law. Additionally, the rules attempt to leverage the requirements of the CCA to intentionally impose more stringent requirements, and therefore higher costs, on electric utility customers, which is in direct conflict with the statutory plain meaning and intent of the Legislature. The potential rate impacts are substantial and could disrupt the harmony of Washington's carefully crafted, transformational climate policies.

Allocation Design

- ***Initial concept for v2027-2030 allocation and schedule (slide 26).***
- ***Potential replacement of WAC 173-446-230(2)(g)(slide 27).***
- ***Potential modifications to the allocation calculation (slide 28).***

According to RCW 70A.65-120(b)-(d), Ecology is required to use utility-specific supply and demand forecasts approved by the appropriate governing board or the utilities and transportation commission. Since CETA was enacted, the increasing potential demand from electrification and large loads, as well as policy changes from the federal government, are likely to create material swings in retail sales, increasing generation costs, and uncertain development of generation used to serve customers over a four-year term. These factors are better predicted on a more near-term, frequent basis, using power cost modeling which becomes more precise the closer a forecast gets to real time – hence the need for an update option. Although forecasted models and plans are valuable for long-term planning, actual reconciliation only happens in real time, which can make the models inaccurate for precise determination of both loads and supply, especially over longer time frames. These challenges are especially prevalent during years with limited rainfall where hydro conditions may vary widely, causing a critical shortage of renewable power generation.

Under Ecology's proposal, a utility's only recourse for additional allowances is the backwards looking adjustment in revised WAC 173-446-230 (2)(g). However, this results in a long lag on allowance deposits, which will result in increased near-term costs to customers and mismatched cost allocation. For example, a utility's third-party verified obligation for a given year is not known until summer the following year, and likely too close to Ecology's October 1st allocation announcement in WAC 173-446-230(2)(i). Allowances likely wouldn't begin depositing into entity accounts until October the following year. For instance, an allocation of allowances for a RY2026 compliance obligation would likely result in a deposit of allowances until October 2028 – after the November 1, 2027 first compliance period deadline. If Ecology continues a practice of spreading adjustments over time, a utility will not receive the full adjustment amount until several years after the compliance obligation was generated – potentially leaving the utility short for the November 1, 2031 second compliance period deadline. In the meantime, the utility will incur compliance obligations and must purchase allowances at a cost to customers, to make up for this shortfall. It is clear under WAC 173-446-230(2) which states "…procurement of those instruments has an associated cost that would be translated into customer electricity prices without the mitigation of that cost burden as provided by this program.". This indicates that Ecology is aware of these associated costs but is not recognizing how the immediacy of these costs will impact customers nor is considering long-standing utility cost allocation principles. Ecology's proposal to remove the ability to revise a forecast without any rational reasoning fails to prioritize customers and affordability and shows a lack of deference to the regulated utility model and the UTC. Instead, Ecology should recognize that the governing boards and UTC to have jurisdiction over frequency, methodology and accuracy of the load and supply forecasts consistent with the CCA statutory language.

Further, Utilities ask that Ecology deposit allowances as quickly as possible after a backwards looking adjustment and outline this schedule in rule. Given program caps are set to decline over time, it is unclear why Ecology prefers pushing allowance deposits into the future when caps are lower and allowances are more expensive. An earlier deposit would allow utilities to avoid costs to customers and do so under a larger cap. The Utilities request that Ecology deposit allowances in a more-timely manner; within a period of maximum 50 days of a utility's initial petition. Furthermore, any additional allowances should be deposited within 15 days of determination. If a utility petitions Ecology for additional allowances by August 11th, then Ecology's schedule should follow a deposit timeline of allowances by the October deadline and ahead of a November 1st retirement.

In summary, the Utilities strongly oppose the removal of a "revised forecast" in WAC 173-446-230(2)(j). A utility's ability to adjust its supply and demand forecast ensures Ecology's allocation uses the most recent and accurate data possible. Ecology abandoning this key function will have material cost impacts to customers without a single ton of emission savings. By removing the ability to submit revised forecasts under WAC 173-446-230(j) as well as the provision in WAC 173-446-230(2)(g) to adjust allowance distributions, the functionality of the program and affordability for reasonable customer rates, is critically at risk.

Administrative Allocation

- ***Ecology requests feedback on Concept 1 (slide 33) and Concept 2 (slide 34) for providing no-cost allowances to mitigate administrative costs.***

As requested by Ecology in August of 2025, the Utilities each furnished their individual account of administrative costs throughout the duration of the program. Company-specific data provided in submissions included the costs of establishing, maintaining, tracking and managing compliance associated with the CCA. Collectively, for the three utilities signed on to these comments, costs exceeded $3 million. These expenditures did not encompass the tremendous cost of labor to provide feedback to Ecology's multiple requests in rulemaking and participating in the many regular cost containment auctions, including preparing application documents, letters of credit, and necessary internal approvals. They also do not include costs associated with the many regulatory proceedings and related preparations necessary to effectuate participation in the CCA program. As already stated in earlier comments, the provision of no-cost allowances is intended to mitigate the cost burden of the program for electric utilities. Ecology's proposed blanketed mitigation for each affected company under both Concepts 1 and 2, falls drastically short of any reasonable amount that may be considered mitigation to downstream customers.

Although the Utilities are appreciative of Ecology's need for administrative cost mitigation as is referred to in statute, the proposed concepts are far from reasonable. As a point of comparison, annual required third-party verification for emissions reporting (WAC 173-441-085) has its costs covered by covered entities, including the Utilities. Verification services vary by year and by covered entity, but have in some cases, exceeded each proposed annual mitigation (for either Concepts 1 and 2) as demonstrated in Tables 1 and 2.

Table 1.	Concept 1: 5,000 Allowances over 4 years		
Period 1	Annual Allowances	Q1-Q3 2025 Average Allowance Price ($)	Annual Estimated Mitigation ($)
Year 1	1,250	$ 57.60	$ 72,000
Year 2	1,250	$ 57.60	$ 72,000
Year 3	1,250	$ 57.60	$ 72,000
Year 4	1,250	$ 57.60	$ 72,000
			$ 288,000

Table 2.	Concept 2: 6,000 Allowances over 4 years		
Period 1	Annual Allowances	Q1-Q3 2025 Average Allowance Price ($)	Annual Estimated Mitigation ($)
Year 1	1,500	$ 57.60	$ 86,400
Year 2	1,500	$ 57.60	$ 86,400
Year 3	1,500	$ 57.60	$ 86,400
Year 4	1,500	$ 57.60	$ 86,400
			$ 345,600

In lieu of Ecology's proposed mitigation concepts, the Utilities are recommending Ecology base any proposed mitigation on a formula which in part, shall either be based on the overall compliance obligation of an applicable entity, or similarly, on an adequate representation of an obligation such as the provision for other no-cost allowances.

Consignment Requirements

- ***Ecology requests feedback on the initial concept for consignment of no-cost allowances for v2027 and beyond (slide 39).***
- ***Ecology also requests feedback on other aspects of allocation or Program design that could strengthen the Program's ability to access economically efficient GHG reductions.***

The Utilities are strongly opposed to any consignment of no-cost allowances for the entirety of the program that does not maintain a flexible option for direct retirement associated with compliance. Unfortunately, in Ecology's recent rulemaking workshop, despite multiple requests for Ecology to outline its interpretation of how and when exemptions for direct compliance would be specifically implemented in the rule, Ecology failed to provide specific guidance on this point. The Utilities find it difficult to comment on the initial concept without clarity on this important component. The continued ability to use no-cost allowances first for direct compliance obligations, across an entire compliance period, is of critical importance in mitigating costs and risk to electric customers. Not only would requiring the consignment of no-cost allowances needed for direct compliance negatively impact both applicable entities and customers, proposed changes would also be highly disruptive to the effectiveness of the overall program.

Consignment creates unnecessary complications that have yet to be addressed by Ecology or the Commission. RCW 70A.65.120(2)(d) and (3)(b) explicitly allow a utility to use no-cost allowances for CCA compliance in any calendar year they were not subject to penalty under RCW 19.405.090. However, CETA compliance may not be known until after a four-year compliance period ends and after the commission has had an opportunity to determine whether to relieve a utility of its administrative penalty, as allowed in RCW 19.405.090. Given CETA compliance may not be known for several years after a given year's no cost allowances are deposited, how would consignment work in those instances and how it would further the goals of the CCA? Given the uncertainty around CETA and the demonstration of greenhouse-gas neutral compliance, Ecology should not require consignment and further complicate the program.

Ecology seems to justify its proposal to require consignment of 50% no-cost allowances allocated to electric utilities on the unsubstantiated conclusion that "through 2044, CETA compliance may not drive proportionate emission reductions consistent with declining economy-wide Cap-and-Invest allowance budgets or state emission limits" (UTC CCA Workshop (Docket U-230161). 23 September 2025. Cap-and-Invest and Electricity Presentation by Washington Department of Ecology). Under CETA, Washington electric utilities are required to be 80 percent non-emitting and 100 percent carbon neutral by 2030. Electric utilities are, as required under the law, demonstrating meaningful progress to this key decarbonization threshold in each of the years leading up to 2030. Additionally, the electric sector is required to be 100 percent non-emitting by 2045. This requirement is more stringent and on a faster timeline than the state climate goals that are driving the emission limits under the CCA. It is not authorized in the statute, nor is it in the state's interests to impose higher costs on electric utilities that are already clean and on a faster path to zero emissions, based on CETA, than any other regulated entities in Washington's economy. The Utilities strongly oppose provisions in this and future rulemakings that would circumvent the ability to retire no-cost allowances for direct compliance.

Regarding the potential requirement for consignment of no-cost allowances, RCW 70A.65.120(3)(b) states, "in consultation with the department of commerce and the utilities and transportation commission, [Ecology] must adopt rules governing the amount of allowances allocated at no cost under subsection (2)(c) of this section that must be consigned to auction." To date, it is unclear if any such consultation has occurred and to what extent that consultation has affected Ecology's proposed rules. This required consultation should take place in a public setting where interested parties can listen and provide feedback. Ecology's proposals for the consignment of no-cost allowances during the second compliance period will have significant cost impacts on customers, and it is the role of the Utilities & Transportation Commission to fully understand and assist Ecology to develop sound policies that mitigate these impacts.

Further, required consignment of electric no-cost allowances will create supply pressures in the electricity sector and potentially increase the frequency of triggering allowance price containment reserve auctions as utilities will need to repurchase significant amounts of allowances. Maintaining the current flexible framework for electric utility no-cost allowances would better align with Ecology's efforts and goals of reducing program complexity, increasing certainty, protecting program integrity, and mitigating CCA burdens to customers.

Forecasts and Retail Load

- ***Timing of forecasts, including "draft" schedule before October 1, 2026 and no-cost allowance forecasts before July 30, 2026***
- ***Modify WAC 173-446 so that all resources supplying retail load are incorporated consistently in forecasts used for allocation.***

Utilities would prefer Ecology extend the 2027-2030 forecast deadline from July 30, 2026, to September 5, 2026. During Ecology's July 22, 2025 workshop the agency requested feedback on a proposal that would extend the July 30 deadline to September 5, which stakeholders generally supported. The additional time helps ensure forecasts are as accurate and current as possible and provides the UTC and stakeholders time to review and if possible and approve revised forecasts.

As a general rule and to be consistent with the statutory language, for investor-owned utilities regulated by the UTC, the UTC must have jurisdiction over the determination of the appropriate forecasting methodologies and accuracy of the forecast during their approval process. These forecasts involve complicated utility operational modeling and estimations that fall in the purview of the UTC, not Ecology. Therefore, the utilities do not support Ecology's proposal to modify WAC 173-446 to provide rules related to specific methods of forecasting.

The Utilities are eager to discuss the proposed changes and stress the serious cost implications for Washington customers as well as the need for regulatory consistency and transparency. Despite repeated feedback requested by Ecology, our concerns and recommendations do not appear to have been considered nor implemented. We urge continued, timely dialogue to ensure a well-functioning program and protect customer affordability as we move forward. It is imperative that these conversations continue without delay to ensure a well-functioning program and uphold our responsibility to advocate for customer affordability and transparency. If you would like to further discuss these comments or have any additional questions, please reach out to Kieran O'Donnell (Kieran.Odonnell@pacificorp.com), Wendy Gerlitz (Wendy.Gerlitz@pse.com) or Janna Dubnicka (Janna.Dubnicka@avistacorp.com).

Sincerely,

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