July 20, 2026

Washington Department of Ecology
Climate Pollution Reduction Program
Attn: Surabhi Subedi
PO Box 47600, Olympia, WA 98504-7600

Submitted via Public Comment Online

RE: Washington Department of Ecology's Cap-and-Invest Rulemaking for Program Updates and Linkage

Avista Corporation, dba Avista Utilities (Avista or the Company), appreciates the opportunity to engage with the Washington Department of Ecology (Ecology) on the proposed rule amendments to WAC 173-441 and WAC 173-446. Avista recognizes the significance of these proposed revisions and the substantial compliance, operational, and reporting impacts they may have on regulated entities.

While Ecology has provided opportunities for stakeholder engagement, several of the proposed changes remain unclear. Many of these significant modifications were not fully addressed either in the accompanying regulatory analysis or during the July 7th public hearing. As a result, additional clarification is needed to ensure that impacted utilities such as Avista can fully understand the intent, implementation, and compliance implications of the proposed amendments. Avista appreciates Ecology's continued efforts to engage with interested parties and solicit stakeholder feedback throughout this process. We encourage Ecology to provide additional guidance on the proposed changes and look forward to continued dialogue and follow-up discussions as the rulemaking progresses.

WAC 173-441 Emissions Reporting

WAC 173-441-020(m) Definition of Nonconformance

As presently proposed, the definition of "Nonconformance" does not recognize that emission factors may be established through a variety of industry-accepted methodologies. Limiting the definition to a single method of determination may inadvertently exclude other technically valid approaches used to quantify emissions and demonstrate compliance. To ensure the definition accurately reflects current industry practices and provides sufficient flexibility for regulated entities, Ecology should acknowledge that emission factors may be determined using multiple accepted methods. More specifically, Avista proposes incorporating the following language into the definition of "Nonconformance":

> *"means any failure to use the methods or emission factors specified by chapter 173-441 WAC to calculate emissions,* ***or an approved alternative method****, or the failure to meet any other requirements of chapter 173-441 or 173-446 WAC"*

WAC 173-441-050(7)(c)(ii)(A)(II) Annual Revisions

As revised, the definition of a *substantive error* is tied to the impact on the quantity of reported greenhouse gas emissions. The proposed language would require a reporter to revise an annual emissions report if either of the following conditions is met: (1) the margin of error between the reported value and the verified value is equal to or greater than five percent, or (2) the difference is equal to or greater than 500 metric tons of CO_2e in total reported greenhouse gas emissions.

The existing 5 percent threshold is a widely accepted verification standard and provides a reasonable, scalable metric that applies consistently across reporters regardless of facility size or emissions volume. In contrast, the proposed addition of a fixed 500 MT CO_2e threshold does not account for differences in reporting scale and could trigger revisions for relatively minor discrepancies that are not material to the overall emissions profile of a reporter. Although 500 MT CO2e is five percent of the original reporting threshold of 10,000 MT CO2e, again, it is not scalable. Because the threshold is static rather than proportional, it would disproportionately increase the number of required revisions without a corresponding improvement in data quality or program integrity. Furthermore, as the definition of an annual revision was intended to address the requirements of House Bill 2215 in the 2026 Legislative Session, it was originally directed towards specific fuels including gasoline, diesel, biodiesel and propane suppliers. To meet the intent of this rule, Avista proposes maintaining the original 10,000 MT CO2e threshold and subsequent five percent revision language, while requiring the 500 MT CO2e addition be applied solely to gasoline, diesel, biodiesel and propane fuel suppliers as originally intended.

It is unclear how the addition of a 500 MT CO_2e threshold would enhance the effectiveness of the verification process. Instead, it appears likely to increase administrative burdens on both reporters and verifiers by requiring corrections for discrepancies that may be insignificant in the context of overall emissions reporting. Requiring additional report revisions would result in increased verification and compliance costs that must be borne by reporters and thus, non-reimbursable impacting the business downstream. Given Ecology's stated objective of maintaining program affordability and minimizing unnecessary compliance burdens, the addition of a fixed 500 MT CO_2e revision threshold appears inconsistent with those goals. Removing this provision or changing industry applicability, would also better align the requirements of this section with the proposed *material misstatement* language in WAC 173-441-020, promoting consistency throughout the rule.

WAC 173-441-124(2)(f)(xi) Definitions for Electric Power Entities; Electricity Importer

Under the definition of *Electricity Importer,* the term "discrete Washington load" is used to describe electricity scheduled through an e-tag by a multi-jurisdictional electric company. However, this term is not currently defined in the rule, nor does the proposed language provide sufficient explanation regarding its meaning or application. The absence of a definition creates ambiguity and may lead to inconsistent interpretation and implementation by regulated entities. If Ecology believes that the term is necessary for administering the program, a clear definition should be included to ensure regulatory certainty and consistent compliance obligations. Otherwise, the term should be removed from the draft rule to avoid confusion and potential reporting disputes.

WAC 173-441-124(2)(q)(iv) Definitions for Electric Power Entities; Imported Electricity

As it pertains to the definition of "Imported electricity", the language as drafted is problematic for Avista due to the definition of "Common Point", as described below. More specifically, this new definition should be amended to acknowledge an outside Washington common point. If this is not included, we request Ecology retain the original language as earlier drafted.

WAC 173-441-124(2)(nn) Definitions for Electric Power Entities; Common Point

Ecology's proposed definition of "Common Point" presents several concerns for multi-jurisdictional utilities such as Avista. First, the definition relies on the term "common system power pool", which is not defined elsewhere in the rule. Without a clear definition, regulated entities are left to interpret the term independently, creating the potential for inconsistent application and compliance uncertainty. To avoid ambiguity, Ecology should either define the term or remove it from the proposed language. Doing so would also help distinguish Washington-specific regulatory concepts from terminology that may be familiar in other jurisdictions, such as California, but is not currently established within Washington's regulatory framework.

In addition, the proposed definition of "Common Point" does not adequately account for the operational realities of multi-jurisdictional utilities. Specifically, the definition does not address common points that are located entirely outside Washington state. To address this gap, Avista recommends adding a new subsection (iii) stating: "isolated fully outside of Washington where the final Point of Delivery (POD) or first Point of Receipt (POR) is located entirely outside of Washington." As drafted, the existing subsections do not contemplate common points outside state boundaries and therefore fail to provide a complete or accurate framework for identifying common points associated with interstate electricity transactions.

Avista has previously raised these concerns and has consistently provided recommended language to Ecology to establish a practical and workable definition. Written comments submitted on July 30, 2025, February 20, 2026, and May 20, 2026, included proposed revisions intended to improve regulatory clarity, accurately reflect utility operations, and ensure consistent implementation of the rule. We encourage Ecology to consider this previously submitted language as a reasonable approach for defining "Common Point" in a manner that is both administratively workable and reflective of multi-jurisdictional utility operations:

> *"For purposes of identifying electricity wheeled through the state by a BAA and MJRP: (a) the combined PORs and PODs located within the state, or (b) the combined PORs and PODs located outside the state."*

WAC 173-441-124(2)(ss) Definitions for Electric Power Entities; Market Purchaser

As currently drafted under the definition of "Market Purchaser", language related to purchased electricity through a centralized electricity market includes mention of a "five-minute interval". As power market transactions utilize an industry standard of one-hour intervals, we strongly suggest staff retain original intervals relating to one-hour instead of the proposed language. This would allow definitions and programmatic language to remain consistent across all administrative code sections.

WAC 173-441-124(3)(xiii)(F) Definitions for Electric Power Entities; Composite Source Accounting

Where the subsection requires a reported composite source POR to provide additional information as specified in the draft language, it is unclear what Ecology means by "different balancing authority areas" in subsection (I), particularly in the context of composite source accounting. Ecology should provide further clarification in subsection (F) regarding these new reporting requirements, including how the term is intended to apply and what information must be reported to demonstrate compliance.

<u>WAC 173-446 Program Rule</u>

WAC 173-446-020 Definitions; Compliance Period

At present, the compliance period is currently four years as listed in rule. However, the language is proposing compliance periods should be shortened to two and three years upon adopting California's compliance schedule. This is concerningly problematic for Avista and any entity who owns hydropower. Although forecasts reasonably provide a prediction of future annual renewable resource production, hydropower is often unpredictable and highly variable year-to-year. Actual weather conditions can drastically veer from these anticipated predictions. The four-year period provides a longer-term outlook and a better opportunity to correct course. Conversely, shortened periods provide less certainty for participating entities and unnecessarily urgent need for allowances which may be avoided within a longer period. We recommend two options for recourse: either (1) retain the original compliance period schedule of four years or (2) provide a separate account with banked allowances accessible to hydroelectric-owned entities in years of high variability so they may recover unexpected losses.

WAC 173-446-020(b) Definitions; Market Sensitive Information

As currently proposed under "Market Sensitive Information," the addition of subsection (b) would authorize Ecology to disclose information based on a determination that such disclosure is in the public interest. This provision raises significant concerns as it introduces a subjective standard that could undermine the certainty and reliability of existing confidentiality protections relied upon by regulated entities. Confidential business information should not be subject to disclosure based on a discretionary assessment of public interest, particularly when such information may be financially-sensitive and its release could result in competitive, economic, or operational harm.

The disclosure of information that is critical to business operations creates unnecessary risk not only for regulated entities but also for the customers they serve. Furthermore, information-sharing provisions within the program are intended to support program administration, compliance, and oversight—not to facilitate broader public disclosure of confidential business information. Expanding Ecology's authority to release protected information based on an undefined public interest standard creates uncertainty for regulated entities and may discourage the transparent exchange of information necessary for effective program implementation. Clear and objective safeguards should be maintained to ensure that confidential information is protected and used solely for purposes directly related to administration of the program. Instead, we suggest Ecology narrow their proposed definition to read:

> *(b) Ecology may release such information if it determines that disclosure is necessary to support compliance with the requirements of WAC 173-446 and RCW 42.56 and that such disclosure does not compromise the confidentiality of protected information, including, but not limited to, customer data, Cap-and-Invest market or auction-related information, or any other information designated as confidential under WAC 173-446-390."*

WAC 173-446-230(3) and (4) Distribution of Allowances to Electric Power Entities; Allocation Schedule

Regarding distribution of allowances to electric utilities, the allocation schedule currently in rule, dictates that Ecology publishes the number of allocated allowances annually. However, the language as drafted claims Ecology will provide a schedule for the entirety of the compliance period, on October 7th of the previous year. This is potentially problematic as forecasts for retail load can and do vary, when actual conditions occur or when models are further refined. For forecasts submitted prior to their allocation, it is unclear how Ecology would handle a potential annual adjustment for entities. Additionally, if the adjustment is awarded, the date for an entity to provide a request for an adjustment to Ecology is August 7th of the calendar year following that emissions year (WAC 173-446-230(4)(d)). However, third-party verification would not be completed until August 10th. We propose Ecology retain the existing language on the allocation schedule. However, if Ecology is not willing to retain the original language, the date of submittal should be adjusted to August 10th to remain consistent with verification requirements.

WAC 173-446-230(5) Distribution of Allowances to Electric Power Entities; No-Cost Allowances

Beginning on January 1, 2026, Ecology is proposing to award eligible entities, a sum of no cost allowances according to their retail sales over the duration of the first compliance period. The maximum number of allowances to be awarded to entities who have greater than 20,000,000 MWh in 2024, is approximately 7,000. This value will decrease with decreasing retail sales. Additionally, the same categories of allowance distributions will be awarded in future compliance periods.

Avista previously provided comments on administrative costs to Ecology on August 22, 2025, in which the majority of documented, accrued costs over the first compliance period, were provided in a detailed summary. In total, costs of which could be accurately accounted for exceeded $1.4 million over the compliance period. Due to the significant nature of personnel involvement over the interval and the timely response needed to provide such information, not all costs could be accounted for. However, these estimated costs were well in-excess of Ecology's proposed 7,000 allowance reimbursement. For example, if we were to calculate a money-value equivalent to this proposed reimbursement, even using a worse-case fee per credit (say, the established ceiling price of $80, the sum would equate to roughly $560,000, a far lower amount than actual accrued expenses over the same period. Since Ecology is proposing administrative cost reimbursement be covered in the form of allowances and not dollars, we are unable to directly compensate customers. Thus, we urge Ecology staff to re-evaluate this strategy by partnering with applicable entities and Washington Utility Commission staff, to identify more effective alternatives.

WAC 173-446-230(6) Distribution of Allowances to Electric Power Entities; Electric Consignment

Regarding the proposed requirement for electric utilities to consign a portion of their no-cost allowances, Avista understands that it will be exempt from any such consignment requirement. However, this was difficult to discern within the exemption provisions and required discussion with Ecology to reach clarity on this issue. The Company suggests Ecology revisit this language such that it is clear who is exempt from the consignment requirements.

If the objective of this newly added section is to limit the accumulation of excess allowances by covered entities, a more effective and transparent approach would be to evaluate forecasted emissions against actual, verified emissions after allocations have been issued and compliance obligations have been determined. Under such an approach, if an entity is found to have received allowances in excess of its demonstrated compliance need, future allocations could be adjusted accordingly to correct the over-allocation. This would provide a more objective and administratively straightforward mechanism for addressing excess allowance holdings, while avoiding the uncertainty and potential inconsistencies associated with interpreting vague exemption criteria. Ultimately, this approach would more effectively address allocation overages without creating unnecessary compliance ambiguity.

Thank you in advance for your time and consideration. We continue to impress upon Ecology staff, the need for transparency and additional communication as it relates to these proposed changes. If you would like to further discuss these comments, our joint comments with Baker Botts or have additional questions, please reach out to Janna Dubnicka at (Janna.Dubnicka@avistacorp.com).

Sincerely,

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