Joint Comments on Chapters 173-441 WAC and 173-446 WAC, Cap-and-Invest Program Updates and Linkage Rulemaking from Avista Corporation, Cascade Natural Gas Corporation, NW Natural, and Puget Sound Energy

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Washington State Department of Ecology
Climate Pollution Reduction Program
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Avista Corporation, Cascade Natural Gas Corporation, Northwest Natural Gas Company d/b/a NW Natural, and Puget Sound Energy, Inc. ("PSE") (collectively, the "Utilities") provide the following comments to the Washington Department of Ecology ("Ecology") regarding the proposed rulemaking that would amend the Climate Commitment Act ("CCA") Program Rule (Chapter 173-446 WAC) and the Reporting of Emissions of Greenhouse Gases Rule (Chapter 173-441 WAC).

In summary, the Utilities:

- Oppose alternating between two- and three-year compliance periods and urge Ecology to maintain Washington's four-year compliance periods to account for variability in energy demand and supply;

- Support the revised biofuels definition but note that the definition's 30% lower greenhouse gas emissions requirement is not applicable to renewable natural gas ("RNG") that replaces fossil natural gas in the Utilities' pipeline systems, and therefore ask Ecology to exclude gas utilities from this requirement;

- Ask Ecology to clarify how the proposed verification framework will operate if linkage occurs and compliance periods shorten;

- Recommend that Ecology strengthen the confidentiality protections under WAC 173-446-020 by establishing clear, predictable standards for protecting market-sensitive information rather than relying on a broad public interest balancing test;

- Ask Ecology to narrow WAC 173-441-124 regarding data sharing agreements to strengthen the protection of confidential information**;**

- Recommend that Ecology narrow the attestation requirement in WAC 173-446-315(1)(a)(v) to matters that are material to participation in the cap-and-invest program or otherwise within the knowledge of authorized representatives after reasonable inquiry;

- Recommend that Ecology clarify WAC 173-446-600 to more clearly specify which allowance vintages may be used to satisfy annual and full compliance period obligations; and

- Encourage transparency around Ecology's coordination on rule development with other agencies and jurisdictions.

I. The Utilities oppose alternating between two- and three-year compliance periods.

The Utilities respectfully urge that Ecology emphasize the importance of longer compliance periods to the other jurisdictions with whom it is pursuing linkage. As the Utilities have previously emphasized, longer compliance periods will account for variability in energy demand and supply from year to year, especially in light of the hydropower reliability considerations unique to Washington, and help smooth out compliance costs for consumers over time.[1] Additionally, other entities such as the Bonneville Power Administration and the Public Generating Pool have similarly asked the California Air Resources Board to adopt four-year compliance periods.[2]

Given the increasing energy demand with the rise of electric vehicles and data centers, the Utilities encourage Washington to maintain its four-year compliance periods. Furthermore, increasing weather variability not only impacts energy demand, but also energy supply as well. In particular, due to the prevalence of hydropower in Washington's energy mix, electric utilities' compliance costs under the CCA are inversely correlated with water resource availability. All else being equal, during low-water years, emissions will increase because utilities will need to rely more on in-state fossil-fuel generation and unspecified market imports, leading to higher compliance costs passed onto consumers. In contrast, high-water years reduce the need for these higher-emission electricity sources, resulting in lower emissions and reduced compliance costs.

As such, a longer compliance period will account for weather-related variability in energy demand and supply from year to year and help ensure that Washington electric utilities and their customers are not unfairly burdened by consecutive low-water years.

II. The Utilities support the revised biofuels definition but oppose applying the petroleum-fuels lifecycle comparison to utility-procured RNG.

The Utilities support implementing Senate Bill's 6058 new definition of "biomass-derived fuels," "biomass fuels," and "biofuels" to refer to "fuels that have at least 30% lower greenhouse

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[1] Joint Comments of Avista Corporation, Cascade Natural Gas Corporation, NW Natural, and Puget Sound Energy to Washington Department of Ecology Regarding Cap-and-Invest Linkage, 2 (May 6, 2025).

[2] Bonneville Power Administration Letter to California Air Resources Board Regarding Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, 2 (Mar. 9, 2026), https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid377/did200184/pid_213315/assets/attachments/26574/h203iks4pp7_document.pdf?v=38298; Public Generating Pool Letter to California Air Resources Board on Proposed 2026 Amendments to the Cap-and-Invest Regulation and Mandatory Reporting Regulation, 2-3 (Mar. 9, 2026), https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid377/did200184/pid_213315/assets/attachments/14702/4i0xiiz6vjf_document.pdf?v=21751.

gas emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute, or fuels that meet a standard adopted by Ecology that aligns with the definitions of a linked jurisdiction."[3] However, the Utilities note that the definition's 30% lower greenhouse gas emissions requirement is not applicable to RNG that replaces fossil natural gas in the Utilities' pipeline systems, because there is no relevant comparison to petroleum fuels in this scenario. As such, the Utilities urge Ecology to exclude gas utilities from the new petroleum-fuels lifecycle comparison requirements in WAC 173-441-122(6) to avoid confusion and significant disruption in utility RNG procurement. Failure to include this exclusion departs from the statutory text of Senate Bill 6058 and would both exceed Ecology's authority and constitute an arbitrary and capricious action under RCW 34.05.570(2)(c).

Absent this clarification, the Utilities are concerned that the additional reporting and verification requirements regarding RNG would add significant additional costs without corresponding benefits. Given that carbon intensity values are often project-specific and dependent on individual production pathways, compliance with this requirement could necessitate substantial additional analysis, data collection, and reporting for each RNG source. By way of example, PSE reported RNG from twelve separate facilities during the last reporting year, each of which could require its own carbon intensity determination. To reduce unnecessary administrative burden while still meeting Ecology's reporting objectives, the Utilities encourage Ecology to develop and publish default carbon intensity values for common RNG pathways. This approach would provide reporting entities the flexibility to either develop source-specific carbon intensity values where available or rely on Ecology-established default values when project-specific information cannot reasonably be obtained.

III. Ecology should clarify the verification requirements under WAC 173-441 if linkage occurs and compliance periods shorten.

The Utilities ask Ecology to provide clarification regarding how the proposed verification framework will operate if linkage occurs and compliance periods shrink. Under WAC 173-441, a reporter subject to third-party verification may obtain less intensive verification services during the second and third years of a three-year verification cycle following an initial full verification. However, under the proposed two-year compliance periods beginning in 2027 and 2029, it is unclear whether reporters would ever meaningfully benefit from the reduced-verification option before entering a new compliance cycle or facing updated reporting and compliance requirements.

The Utilities are concerned that the interaction between the proposed compliance period structure and the existing verification framework may create confusion and unintended administrative burden. Thus, the Utilities recommend that Ecology clarify how verification cycles will function under the proposed compliance period schedule should compliance periods shorten and evaluate whether revisions are needed to preserve the intended efficiencies associated with less intensive verification in subsequent years. Notably, maintaining four-year compliance periods even if linkage occurs will avoid this complication.

[3] Washington Senate Bill 6058, Sec. 1(12).

IV. The confidentiality protections under WAC 173-446-020 should be strengthened.

Regarding market sensitive information, WAC 173-446-020(b) states, “Ecology may choose to release such information if it determines that the public interest in disclosure outweighs the public interest served by maintaining the confidentiality of such information.” This framework puts market sensitive information at risk of disclosure and gives Ecology too much discretion in determining when such information can be released. It is also unclear what specific situations Ecology has in mind where the public interest in disclosure outweighs the public interest served by maintaining confidentiality.

This proposed standard is inherently subjective and fails to establish clear, objective criteria for when confidential business information may be released. As a result, regulated entities cannot reliably predict whether information submitted with the expectation of confidentiality will remain protected. In a competitive emissions market, even limited disclosure of commercially sensitive information—including trading strategies, compliance planning, procurement decisions, or other nonpublic business information—could disadvantage market participants, distort market behavior, and undermine confidence in the program’s confidentiality protections.[4]

WAC 173-446-020(b) also grants Ecology broad discretion without meaningful guardrails or procedural safeguards. Rather than relying on well-defined confidentiality standards or limiting disclosure to circumstances expressly authorized by law, the proposed language effectively allows case-by-case balancing based on Ecology’s interpretation of the public interest. This creates legal and commercial uncertainty and may discourage regulated entities from providing complete and candid information if they believe confidentiality protections are subject to discretionary override. To promote market integrity and encourage full compliance, WAC 173-446-020 should establish clear, predictable standards for protecting market-sensitive information, rather than relying on a broad public interest balancing test.

V. Ecology should narrow WAC 173-441-124 regarding data sharing agreements to strengthen the protection of confidential information.

The proposed data-sharing provisions in WAC 173-441-124(1)(d) remain overly broad and do not adequately protect confidential or commercially sensitive information. As discussed in previous Utility comments, for example PSE’s May 20, 2026 comments, market transaction data can include commercially sensitive information that, if disclosed, could create competitive concerns and provide insight into utility procurement and trading strategies. While the Utilities understand and support Ecology’s need to obtain information necessary to verify emissions reporting and analyze market transactions, the proposed rule does not sufficiently limit the scope of information that may be collected or provide explicit protections for confidential information. The Utilities therefore reiterate the prior recommendation that Ecology either narrow the scope of required data collection to information necessary for emissions verification and market analysis or explicitly require protections for confidential and commercially sensitive information.

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[4] Importantly, WAC 173-446-317 currently recognizes the sensitivity of disclosing commercially sensitive bidding information and prohibits the disclosure of such information.

The Utilities propose the following revision to section WAC 173-441-124(1)(d) with new language underlined:

> For emissions year 2027 and forward, a balancing authority operating in Washington must provide written authorization for data sharing to support verification and analysis of market transactions and associated emissions, and such authorization must be renewed and submitted to Ecology once every two years. <u>This data-sharing authorization is only for information on total imports, total exports, and total wheel-throughs. This data-sharing authorization shall include protections for confidential or commercially sensitive information.</u>

Adding these protections would allow Ecology to obtain the data necessary to administer the program while reducing risks associated with disclosure of commercially sensitive market information. The Utilities also encourage Ecology to work with stakeholders and legal counsel to ensure the final rule appropriately balances regulatory oversight needs with confidentiality protections.

VI. Ecology should narrow the proposed attestation requirement in WAC 173-446-315(1)(a)(v).

The proposed attestation requirement in WAC 173-446-315(1)(a)(v) is overly broad and may create significant practical challenges for auction participants. As drafted, the provision appears to require the Primary Account Representative and Alternate Account Representative to attest, during each auction registration, to the existence and status of any ongoing investigation—or any investigation occurring within the prior ten years—related to a broad range of commodity, securities, environmental, or financial market matters involving not only the participating entity, but also affiliated entities with direct corporate associations.

It may be unreasonable to expect auction account representatives to have complete and current knowledge of every potentially relevant investigation across a large utility organization and its affiliates, particularly where investigations may be unrelated to participation in Washington's cap-and-invest program. The Utilities recommend that Ecology narrow the scope of the attestation to matters that are material to participation in the cap-and-invest program or otherwise within the knowledge of the entity's authorized representatives after reasonable inquiry. At a minimum, Ecology should clarify the intent of the requirement and establish reasonable limits on the scope of information that auction participants are expected to certify.

VII. Ecology should make clarifying revisions to WAC 173-446-600.

Proposed WAC 173-446-600(5)(a)(iii) and (b)(iii) should be revised to more clearly describe which "allowances of a former year's vintage" may be used to satisfy annual and full compliance period obligations. As drafted, the proposed language creates confusion because both obligations include a one-year lag between the emissions year and the surrender deadline. For an annual compliance obligation, the applicable obligation is tied to emissions from the prior budget year, not the year in which surrender occurs. Accordingly, an annual surrender due on November

1, 2027 for 2026 emissions should be satisfied using 2026-vintage allowances or allowances from prior years—not 2027-vintage allowances.

The same clarification is needed for the full compliance period obligation. For example, the full compliance period obligation due November 1, 2027 for the 2023–2026 compliance period should be satisfied using allowances with vintages from within that compliance period, or from prior years. It should not be read to allow use of 2027-vintage allowances, because 2027 is outside the applicable compliance period. Ecology should revise the proposed language to make clear that "current" or "applicable" vintage years refer to the emissions budget year or compliance period being covered by the surrender obligation, rather than the calendar year in which the surrender deadline occurs.

VIII. The Utilities encourage transparency around Ecology coordination on rule development.

As was raised by the electric and gas utilities in previous comments,[5] there is a shared desire for greater transparency throughout the rulemaking process. On a number of different aspects of the program, the statute requires coordination between the agencies. For example, RCW 70A.65.120(3)(b) requires consultation with the Department of Commerce and the Washington Utilities and Transportation Commission regarding utility allowance allocations. However, little information or visibility into these consultation processes has been provided through the rulemaking process. Ecology can and should provide greater visibility into how the required consultations were carried out and the extent to which those consultations informed rule development.

Finally, in the Joint Gas IOU Comments on May 6, 2025,[6] the Utilities requested greater transparency and an open process regarding how the Consultation Committee for the Washington-California-Québec linkage will operate, including public comment opportunities and deliberation in open meetings. Such a process would result in better outcomes, as the public, regulated entities, and agency officials would benefit from increased dialogue with each other about the potential impacts of any proposed changes. For example, it is also not clear whether and to what extent the new sections on linkage and actions Ecology might take in case of linkage revocation in WAC 173-446-090 were taken directly from the rules of or coordinated with California and Québec.

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[5] *E.g.*, Joint Gas IOU Comments (PSE, Avista, and Cascade Natural Gas Corporation, NW Natural) to the Department of Ecology, 1-2, (May 6, 2025); Joint Electric IOU Comments (PSE, Avista, and PacifiCorp) to Ecology, 6 (Dec. 5, 2025); PSE Comments to Ecology, 3 (Dec. 5, 2025).

[6] Joint Gas IOU Comments (PSE, Avista, and Cascade Natural Gas Corporation, NW Natural) to Ecology, 1-2 (May 6, 2025).

The Utilities appreciate Ecology's consideration of these comments and its efforts to further linkage. If you would like to further discuss these comments or have any questions, please reach out to Jillian Caires (jillian.caires@avistacorp.com), Abbie Krebsbach (abbie.krebsbach@mdu.com), Mary Moerlins (mary.moerlins@nwnatural.com), and Lorna Luebbe (lorna.luebbe@pse.com).

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