April 18, 2022

Sent Via E-Mail

Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: Rulemaking Timeline and Procedures – Chapter 173-446 WAC, Climate Commitment Act Program

The Washington Department of Ecology (Ecology) is the implementing agency for the Climate Commitment Act (CCA), which requires Ecology to commence an economy-wide cap-and-invest program by January 1, 2023. Avista, PacifiCorp, the Public Generating Pool, and Puget Sound Energy (Joint Utilities) respectfully submit the following supplemental comments on the timeline and procedures relating to the adoption by rule of an allocation schedule for the provision of no-cost allowances to electric utilities for the first compliance period of the program. These comments supplement those submitted by the Joint Utilities on January 26, 2022 (January 26 Comments) and raise timing and process issues that came to light through informal communication with Ecology following the submission of those comments.

Statutory requirements under the Climate Commitment Act.

Under RCW 70A.65.120, by October 1, 2022, Ecology must:

> *"(2)(a) …adopt rules, in consultation with the department of commerce and the utilities and transportation commission, establishing the methods and procedures for allocating allowances for consumer-owned and investor-owned electric utilities. The rules must take into account the cost burden of the program on electricity customers"*; and

As explained in this letter, Ecology must interpret subsection (2)(a) as being governed by the requirements of subsection (2)(b). The last sentence of subsection (2)(a) dictates that the rules adopted by Ecology "take into account the cost burden of the program." This subordinates the requirements of subsection (2)(a) to those of subsection (2)(b), as follows:

> *"…adopt an allocation schedule by rule, in consultation with the department of commerce and the utilities and transportation commission, for the first compliance period for the provision of allowances at no cost to consumer-owned and investor-owned electric utilities. This allocation must be consistent with a forecast, that is approved by the appropriate governing board or the utilities and transportation*

commission, of each utility's supply and demand, and the cost burden resulting from the inclusion of the covered entities in the first compliance period."[1]

This subsection means the forecast must be prepared for, submitted to, and then approved by governing boards or by the Utilities and Transportation Commission (UTC) before Ecology can make allocation determinations.

Electric utilities must have sufficient time and process guidance to determine, develop, seek approval by the appropriate governing board or the UTC for, and transmit their cost burden forecasts to receive no-cost allowances consistent with statute.

As discussed in the Joint Utilities' January 26 Comments, it is critically important that electric utilities subject to the requirements of Washington's Clean Energy Transformation Act (CETA) are allocated allowances in sufficient quantity to mitigate the cost burden of the cap-and-invest program on electricity customers. This policy direction reflects the duplicative nature of the intent of both CETA and the Climate Commitment Act as it pertains to the electric sector and ensures that utility customers are not burdened with the costs of decarbonizing the electric sector under two separate policy regimes.

Importantly, allowance allocation hinges on a forecast process that informs the nature and extent of the program's cost burden on customers, information on which Ecology must rely when "establishing methods and procedures for allocating allowances." Based on the statute, the Joint Utilities believe that Ecology's role is to adopt an allocation schedule consistent with a utility-developed forecast of supply, demand and cost burden. This point was discussed in greater length in the Joint Utilities' January 26 comments. Specifically, the Joint Utilities asked Ecology to narrow WAC 173-446-230(1) to more closely follow statutory direction around the forecast process and the roles and responsibilities of utilities to develop forecasts, the UTC or governing bodies to approve, and Ecology to allocate allowances consistent with these forecasts.

As it relates to process, the Joint Utilities are concerned that the draft rules issued by Ecology thus far do not address the process and timing for forecasting and receiving allowances by October 1, 2022. The Joint Utilities recommend that Ecology consult with the UTC, the Department of Commerce (Commerce) and the electric utilities so that all bodies are working together on this impactful task. Engagement with the UTC and Commerce, which is required by statute, is a critical component of ensuring that utility cost burdens are sufficiently mitigated and that appropriate statutory deadlines are met. A consultative process will also help provide needed clarity for electric utilities to obtain approval of their cost burden forecasts, so that Ecology can establish an allocation schedule by October 1, 2022.

Further, the Joint Utilities are concerned that Ecology may interpret its obligations under the CCA in such a way that does not allow sufficient time to complete the process articulated above. Under RCW 70A.65.120(2), cited above, Ecology must adopt "methods and procedures for allocating allowances" to utilities as well as the allocation schedule by October 1, 2022. As noted, the allocation schedule must be based on a cost burden forecast that is developed by utilities and submitted to and approved by the Utilities and Transportation Commission or appropriate governing body. To accomplish this within the timeframe available and consistent with state notice and comment rulemaking procedures, the finalization of the allocation schedule and associated cost burden forecast cannot depend upon the

[1] RCW 70A.65.120(2)(b)

adoption of any final “methods and procedures” developed by Ecology. There is not sufficient time available to finalize methodological guidance by October and for that guidance to be applied by the same October deadline. Due to the timing and framework set out in statute, the utilities interpret Ecology’s obligation to develop “methods and procedures for allocating allowances” to apply exclusively to the mechanics of transferring allowances to utility accounts versus any methodology or process that must be final before it can be applied to develop the allowance allocation schedule.

Conclusion

As required by statute, Ecology’s obligation with respect to utility allocation of no cost allowances should be exclusively to the mechanics of transferring allowances to utility accounts and to consultation with the UTC and Commerce on achievable timelines while individual utilities are responsible for developing their cost burden forecasts and seeking appropriate approvals from the UTC or relevant governing body. Ecology should consult with the UTC and Commerce to ensure that the timing and process are appropriate and achievable. Ultimately, the Joint Utilities believe that the best outcomes would include discussion with the electric utilities to inform this new and uncertain process in the best interests of customers. The Joint Utilities look forward to discussing these issues in a future dialogue with the Department of Ecology. We appreciate your consideration of these important matters.

Sincerely,

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