BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of WASHINGTON UTILITIES AND TRASPORTATION COMMISSION, Commission-led Workshop Series on the Climate Commitment Act.	))))))))	DOCKET U-230161 COMMENTS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission's ("Commission") October 23, 2023 Notice of Opportunity to Provide Comments and Agenda in Docket U-230161 ("Notice"), the Alliance of Western Energy Consumers ("AWEC") files these Comments. In response to comments filed in April 2023, the Commission identified priority issues for Commission guidance, which it plans to address through a series of workshops. The next workshop is scheduled for November 8, 2023, with expected topics to include Climate Commitment Act ("CCA") Risk Sharing Mechanisms and CCA Dispatch Cost Modeling. In preparation for this workshop, the Commission requested that comments be submitted by November 3, 2023, answering seven questions.

1) ***For a potential CCA risk sharing mechanism, what risks associated with the CCA are under utility control? Examples may include market risk, energy procurement, conservation levels, etc.***

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2 AWEC continues to have serious concerns about the development of a risk sharing mechanism, at least at this time.[1] As AWEC noted in its September 7th comments, the Cap-and-Invest program is, by design, a market-based mechanism, meaning that the market is intended to provide the incentive to reduce emissions.[2] The program also includes non-compliance penalties, which further serve to incentivize compliant utility actions.[3] Accordingly, to the extent a risk-sharing mechanism is designed to reduce emissions beyond what will occur naturally through the Cap-and-Invest program and in a manner that increases costs to customers, AWEC is firmly opposed to such a mechanism. Moreover, Washington's CCA Cap-and-Invest program is still in its early stages, with some design details still to be determined and with programmatic changes continually possible. For example, the Washington Department of Ecology ("Ecology") is still in the process of seeking feedback for its "Additional Electricity Markets" draft rule, which is intended to identify and establish obligations for entities that import electricity into Washington from centralized electricity markets such as the Energy Imbalance Market, Extended Day Ahead Market and Southwest Power Pool's Markets+ initiative.[4] And, on November 2, 2023, Ecology released its preliminary decision to pursue linking Washington's Cap-and-Invest program to similar programs in California and Québec.[5] AWEC understands Ecology to also be considering several options for agency request legislation in the upcoming legislative session. These are just a few of the very recent examples demonstrating that the Cap-

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[1] *See also* AWEC's September 7, 2023 comments in this proceeding.
[2] Docket U-230161 - AWEC's September 7, 2023 Comments at ¶¶ 3-6.
[3] RCW 70A.65.200.
[4] https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-441-446?utm_medium=email&utm_source=govdelivery.
[5] Nov. 2 - Ecology to pursue carbon market linkage - Washington State Department of Ecology.

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and-Invest program is still in its developmental phase, and therefore, a comprehensive understanding of CCA risks, who has control over those risks, and the implications to ratepayers of a risk-sharing mechanism are unknowable at this time.[6] As such, a risk-sharing mechanism is at best premature at this time, even if the proper risk were to be identified.

2) How should a potential CCA risk sharing mechanism be structured?

3 If the Commission is inclined to move forward with a risk-sharing mechanism, it must be developed based on an evidentiary record, with an opportunity to seek data and engage in analysis of various proposals with the ability to respond to other parties. Absent such a process, the implications of a risk-sharing mechanism would be wholly theoretical. More substantively, as AWEC indicated in its September 7th comments, a risk-sharing mechanism should ensure that a utility is achieving CCA compliance in a least-cost manner without adding additional requirements beyond those in the CCA itself. A risk-sharing mechanism should also not be a substitute for developing a durable analytical framework for ensuring that utilities are adequately and consistently evaluating compliance options for each compliance period and over the long-term. However, as noted above, the Commission should not substitute its judgment for that of the Legislature by adopting a risk-sharing mechanism that is intended to function as an additional emissions reduction measure above and beyond the CCA itself, as advocated by NW Energy Coalition ("NWEC") and Climate Solutions, unless such a mechanism also serves to ensure least-cost compliance with the CCA.[7]

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[6] We also note that the Cap-and-Invest program is being partially challenged before the United States District Court – Western District of Washington, which is currently anticipated to go to trial in late June 2024. These examples are also in addition to other on-going processes at Ecology for implementing the CCA.
[7] Docket U-230161 – Climate Solutions and NW Energy Coalition ("NWEC") October 17, 2023 Joint Comments at 2.

4 The Commission has designed risk-sharing mechanisms consistent with its role as an economic regulator in the past. For example, electric utilities are subject to the Power Cost Adjustment Mechanism ("PCAM"). For natural gas utilities, the Commission could consider whether inclusion of CCA compliance costs should be included as part of the annual Purchased Gas Adjustment mechanism, including whether establishing deadbands for allowance costs, similar in principle to the deadbands that exist for an electric utility's power costs, could be designed to provide an equitable sharing of economic risk. For electric utilities, given their CETA compliance obligations, the provision of no cost allowances, and the PCAM structure, AWEC does not view a risk-sharing mechanism as providing any additional economic incentive for a utility to comply with the CCA in a least-cost manner.

5 In their October 17, 2023 comments, Climate Solutions and NW Energy Coalition ("NWEC") argue that investor-owned utilities ("IOUs") do not internalize price signals because they are able to "pass through 100% of forecasted CCA allowance costs to their ratepayers,"[8] which they argue "undermines the intent of the CCA mechanism."[9] However, it is not accurate that utilities are simply able to pass through 100% of forecasted CCA allowance costs to their ratepayers (absent the Commission setting up such a mechanism, which would likely be unlawful because the Commission must not be required to approve rates that include imprudent components), nor do current, long-standing regulatory measures undermine the intent of the CCA. The intent of the CCA is clear on its face – to use a market-based mechanism to send price

[8] *Id.* at 1.
[9] *Id.* at 2.

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signals as a way to reduce emissions in Washington state. Refinements to this policy should be addressed with Ecology.

6 From a ratemaking perspective, just because a utility incurs a cost does not mean that it is guaranteed 100% rate recovery of that cost under traditional regulation for two reasons. First, for costs included in base rates, utilities bear the risk of cost-variances between rate cases. If CCA compliance costs were to be included in base rates, as AWEC suggested in its September 7th comments,[10] this would mean that a utility would not receive dollar-for-dollar cost-recovery of actual CCA compliance costs; rather, the utility would take the market risk of allowance market prices. It is only through special ratemaking treatment, such as the use of a deferral, that the utility has the opportunity to argue that it should receive dollar-for-dollar cost recovery of CCA compliance costs. Second, regardless of whether costs are forecast in a general rate case or subject to review in a separate rate recovery mechanism, the Commission is only authorized to approve rates that are fair, just reasonable and sufficient.[11] A utility cannot recover imprudently incurred costs, as they would not be considered fair, just, reasonable and sufficient. This is true regardless of whether the costs are being considered for inclusion in rates on a forecast basis or being reviewed for inclusion in rates after the fact. When considering CCA costs on a forecast basis, the Commission should not approve rates based on a utility's compliance strategy that is not least-cost, considering risk. For actual CCA compliance costs, utilities should not be

[10] Docket U-230161 - AWEC's September 7, 2023 Comments at ¶ 10.
[11] *See WUTC v. Avista Corp., d/b/a Avista Utils.*, Dockets UE-160227 and UG-160228, Order 06 ⁋ 79 (Dec. 15, 2016) ("[T]he Commission's ultimate goal is to set rates that are fair to customers and to the Company's shareholders; just in the sense of being based solely on the record developed in a rate proceeding; reasonable in light of the range of possible outcomes supported by the evidence; and sufficient to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.").

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permitted to recover CCA compliance costs that are demonstrated to be higher than compliance costs that would have been incurred had the utility taken an alternative course of action (again judged based on what the utility knew or should have known at the time the decision is made). In sum, utility compliance actions – including over-reliance on the purchase of allowances – is and should continue to be subject to prudence review and potential disallowance.

3) What should the Commission consider when assessing utility actions for prudency as they relate to the CCA?

7 The Commission should utilize its long-standing prudence standard when assessing utility actions for prudency as they relate to the CCA. That is, the Commission should consider whether the utility's actions were prudent based on what the utility knew or should have known at the time the decision was made.[12] Utilities should be directed to develop and maintain contemporaneous evidence supporting their decisions related to Cap-and-Invest compliance. If utilities act imprudently – including a compliance strategy that relies on purchasing allowances that were, at the time the decision was made, demonstrably more expensive than investments in measures that reduce emissions – then the utility should face a disallowance.

4) When should the risk sharing mechanism allow for prudency determination? Every auction, yearly, every four-year compliance period, or another frequency?

8 If the Commission were to move forward with a risk-sharing mechanism, AWEC struggles to see how the Commission could determine prudence at an interval more frequently

[12] *See e.g.* Docket No. UE-190882, Order No. 05 at ¶ 42 (March 2, 2020).

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than every four-year compliance period without adding additional requirements above those currently in the CCA.

5) Should the Commission require utilities to include GHG costs in their dispatch modeling?

9 AWEC assumes that the dispatch modeling in this question refers to net power cost modeling, and finds that it is premature for the Commission to determine whether it should require utilities to include GHG costs in their dispatch modeling. Similar to AWEC's position on the risk-sharing mechanism above, the Commission should make such a determination in a separate proceeding and only after the development of an evidentiary record. Generally speaking, however, forecast net power costs should mirror actual net power costs as closely as possible. If utilities are not considering GHG costs in operations decisions (i.e. when making actual dispatch decisions), then inclusion of a GHG cost in forecast net power cost rates only serves to increase costs by changing the economics of resource dispatch without any clear benefit to customers, and is arguably nothing more than a wealth transfer from customers to shareholders. Even if utilities are considering GHG costs when making operational decisions, given the provision of no-cost allowances to cover the retail load of Washington utilities, a clear understanding of the economic benefits of doing so needs to be further understood.

10 At this juncture, and in light of the relatively short amount of time to undertake analysis prior to the submission of these comments, AWEC is unclear whether each of the electric utilities have consistently considered CCA compliance costs in their respective net power costs. PacifiCorp's general rate case, in which CCA costs are an issue, is still pending. In PSE's 2022 Multi-Year Rate Plan filing, the Revenue Requirement Stipulating Parties agreed that PSE,

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as part of its compliance filing, would update its power cost model to include "impacts to dispatch logic related to [CCA] compliance,"[13] however, the specifics of what this would entail were not part of the settlement.[14] The result, however, was an incredible 74 percent rate increase to approved rate year one rates, which the Commission concluded to be "a substantial and material departure from the rates the Commission determined were equitable, fair, just, reasonable and sufficient."[15] Because this issue arose during the compliance filing process, intervenors such as AWEC were not able to fully investigate PSE's modeling methods and the drivers behind the net power cost impacts seen in that case, and a subsequent opportunity to do so has yet to arise. A deeper understanding, via the ability to investigate, is necessary in order to understand whether and how GHG costs included in dispatch modeling relate to actual costs that the utility is likely to incur.

6) What information is needed/readily available to effectively model GHG costs in dispatch, and what assumptions can be made to navigate any potential data limitations?

11 As discussed in its response to the previous question, AWEC does not believe that the Commission should require utilities to include GHG costs in their dispatch modeling at this time, absent a separate investigatory process that allows for the development of an evidentiary record.

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[13] Docket Nos. UE-22006, UG-220067 & UG-210918 – Settlement Stipulation and Agreement on Revenue Requirement and All Other Issues Except Tacoma LNG and PSE's Green Direct Program at ¶ 28.
[14] Docket Nos. UE-22006, UG-220067 & UG-210918 - Order 26/12 at ¶ 18 (Commission stating that "PSE's compliance filing is the first time in this proceeding that the Company has presented conclusions from modeling the impacts of the CCA on its future use of natural gas and coal-fired resources.").
[15] Docket Nos. UE-22006, UG-220067 & UG-210918 - Order 26/12 at ¶ 14.

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7) ***What effect would the inclusion of GHG costs in dispatch modeling have on customers?***

12 This question gets to the heart of what AWEC would expect to learn through a more in-depth investigation of the utility's modeling and dispatch decisions related to the CCA. AWEC expects that the inclusion of GHG costs in dispatch modeling would only be likely to increase the costs of CCA compliance for customers. Whether such costs are justified because they are being incurred in actual operations by the utilities or because customers receive corresponding economic benefits associated with these costs remains unclear.[16]

13 AWEC appreciates the opportunity to provide these comments and looks forward to continued engagement on CCA issues in this proceeding.

Dated this 3rd day of November, 2023.

Respectfully submitted,
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[16] AWEC's current understanding is that no-cost allowances are not provided for emissions associated with a utility serving in its Balancing Authority function nor for wholesale sales, which typically provide revenues back to customers. However, AWEC also understands this to be an issue that is or will be under consideration with Ecology. As such, at this time, AWEC does not view these instances as weighing in favor of considering GHG in dispatch. This circumstance does further highlight why it is premature to adopt a risk-sharing mechanism at this time.