

**EXH. JK-1T
DOCKET UG-230968
WITNESS: JASON KUZMA**

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

Docket UG-230968

PUGET SOUND ENERGY,

Respondent.

PREFILED DIRECT TESTIMONY (NONCONFIDENTIAL) OF

JASON KUZMA

ON BEHALF OF PUGET SOUND ENERGY

APRIL 25, 2024

PUGET SOUND ENERGY
PREFILED DIRECT TESTIMONY (NONCONFIDENTIAL) OF
JASON KUZMA

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PUGET SOUND ENERGY

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1 **PUGET SOUND ENERGY**

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3 **JASON KUZMA**

4 **I. INTRODUCTION**

5 **Q. Please state your name, business address, and position with Puget Sound**
6 **Energy.**

7 A. My name is Jason Kuzma, and my business address is P.O. Box 97034, Bellevue,
8 Washington 98009-9734. I am employed by Puget Sound Energy (“PSE”) as an
9 Assistant General Counsel.

10 **Q. Have you prepared an exhibit describing your education, relevant**
11 **employment experience, and other professional qualifications?**

12 A. Yes; please see Exh. JK-2.

13 **Q. What are your duties as an Assistant General Counsel?**

14 A. As an Assistant General Counsel for PSE, I am responsible for an array of legal
15 and regulatory matters on behalf of PSE.

16 **Q. What is the purpose of this prefiled direct testimony?**

17 A. This prefiled direct testimony provides an overview of the Cap-and-Invest
18 Program of the Climate Commitment Act, describes how the Cap-and-Invest
19 Program functions, and explains how gas suppliers, such as PSE, operate within
20 the structures of the Cap-and-Invest Program;

1 **II. OVERVIEW OF THE CLIMATE COMMITMENT ACT**

2 **A. Structure of the Climate Commitment Act**

3 **Q. What is the Climate Commitment Act?**

4 A. On May 17, 2021, Governor Jay Inslee signed Engrossed Substitute Senate
5 Bill 5126,¹ more commonly referred to as the Climate Commitment Act or the
6 CCA, into law, thereby establishing Washington as the second state in the United
7 States² to adopt an implement a comprehensive market-based mechanism aimed
8 at reducing greenhouse gas emissions from large emitters. The Climate
9 Commitment Act defines the “climate commitment” as

10 the process and mechanisms to ensure a coordinated and strategic
11 approach to advancing climate resilience and environmental justice
12 and achieving an equitable and inclusive transition to a carbon
13 neutral economy.³

14 The CCA is a complicated statute that seeks to:

- 15 • reduce greenhouse gas emissions, based on current science and
16 emissions trends, to support local and global efforts to avoid the
17 most significant impacts from climate change;⁴
- 18 • minimize leakage from Emissions-Intensive Trade Exposed
19 Industries (“EITE”);⁵
- 20 • pursue significant reductions of emissions and air pollutants in
21 overburdened communities, as well as provide direct and

¹ Engrossed Substitute Senate Bill 5126, codified as Chapter 70A.65 of the Revised Code of Washington (RCW), available at <https://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5126-S2.SL.pdf?q=20240408121924>.

² California was the first state to establish a market-based mechanism to reduce greenhouse gas emissions from large emitters with the passage of Assembly Bill 32 (AB 32) in 2006.

³ RCW 70A.65.010(15).

⁴ See RCW 70A.65.005(2).

⁵ See RCW 70A.65.005(6).

1 meaningful benefits to these communities with the goal of
2 eliminating statewide disparities;⁶

- 3 • empower the Environmental Justice Council created by the
4 Healthy Environment for All Act (the “HEAL Act”)⁷ to provide
5 recommendations;⁸
- 6 • prevent job loss and provide protective measures for any workers
7 adversely impacted by the transition to a clean energy economy.⁹

8 The Climate Commitment Act directs the Washington State Department of
9 Ecology to “implement a cap on greenhouse gas emissions from covered entities
10 and a program to track, verify, and enforce compliance through the use of
11 compliance instruments.”¹⁰ This program is known as the “Cap-and-Invest
12 Program.”

13 **1. Compliance Instruments**

14 **Q. What is a “compliance instrument” by which the Department of Ecology**
15 **must “track, verify, and enforce compliance” with the Climate Commitment**
16 **Act?**

17 A. The Climate Commitment Act defines the term “compliance instrument” as
18 follows:

19 “Compliance instrument” means an allowance or offset credit
20 issued by the [Department of Ecology] or by an external
21 greenhouse gas emissions trading program to which Washington

⁶ See RCW 70A.65.005(7).

⁷ Engrossed Second Substitute Senate Bill 5141, codified as Chapter 70A.02 RCW, available at <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5141-S2.SL.pdf?q=20240408121715>.

⁸ See RCW 70A.65.005(7).

⁹ See *id.*

¹⁰ See RCW 70A.65.060(1).

1 has linked its greenhouse gas emissions cap and invest program.
2 One compliance instrument is equal to one metric ton of carbon
3 dioxide equivalent.¹¹

4 a. Allowances

5 **Q. What is an “allowance” under the Climate Commitment Act?**

6 A. An allowance is “an authorization to emit up to one metric ton of carbon dioxide
7 equivalent.”¹² Entities with compliance obligations under the Climate
8 Commitment Act may purchase allowances at auctions conducted by the
9 Department of Ecology to satisfy a compliance obligation to cover greenhouse
10 gas emissions for which they have a responsibility. The sale of allowances by the
11 Department of Ecology in these auctions provides the proceeds to the state for use
12 in the “invest” part of the Cap-and-Invest Program.

13 Other entities—referred to as “general market participants”—may choose to
14 purchase allowances at auction in order to resell them on the secondary market or
15 to retire them to provide environmental benefits.¹³ The Climate Commitment Act
16 generally defines a “general market participant” as “a registered entity that is not
17 identified as a covered entity or an opt-in entity that is registered in the program
18 registry and intends to purchase, hold, sell, or voluntarily retire compliance
19 instruments.”¹⁴

¹¹ RCW 70A.65.010(18); *see also* WAC 173-446-020 (definition of “compliance instrument”).

¹² RCW 70A.65.010(1); *see also* WAC 173-446-020 (definition of “allowance”).

¹³ *See* RCW 70A.65.090(7)(b), (8).

¹⁴ RCW 70A.65.010(39); *see also* WAC 173-446-020 (definition of “general market participant”).

1 The cost of an allowance sold at auction is set not by the Department of Ecology
2 but by market forces, through a bidding process by which auction participants
3 identify what they are willing to pay in exchange for an allowance. In other
4 words, auction participants determine the value of allowances sold at each
5 auction. Similarly, the price of an allowance sold on secondary markets is set by
6 market forces that reflect the supply of, and demand for, allowances.

7 **b. Offset Credits**

8 **Q. Are allowances the only method for compliance with the Climate**
9 **Commitment Act for greenhouse gas emissions in a given period?**

10 A. No. Offsets are a method to invest in programs that sequester greenhouse gasses,
11 such as nature-based climate solutions, to “offset” the amount of emissions a
12 specific entity is producing. The Climate Commitment Act offsets can be used as
13 allowances for purposes of compliance, but are not additive and if used are
14 subtracted in equal amount from the Department of Ecology’s allowance budget.
15 In other words, if a covered entity or opt-in entity uses an offset for compliance,
16 the Department of Ecology removes a corresponding number of allowances from
17 the pool of allowances available.¹⁵

18 **Q. What requirements exist for offsets under the Climate Commitment Act?**

19 A. Under the Climate Commitment Act, all offsets must

¹⁵ See RCW 70A.65.170(5); see also WAC 173-446-250(1).

- 1 • provide direct environmental benefits to Washington or a linked
2 jurisdiction;¹⁶
- 3 • be real, permanent, quantifiable, verifiable, and enforceable;¹⁷
- 4 • be additional;¹⁸
- 5 • result from the use of a compliance offset protocol that meets the
6 requirements of WAC 173-446-505;¹⁹
- 7 • result from an offset project that is listed in accordance with
8 WAC 173-446-520;²⁰
- 9 • result from an offset project that complies with the monitoring,
10 reporting and record retention requirements of WAC 173-446-
11 525;²¹
- 12 • result from an offset project that is verified pursuant to the
13 requirements of WAC 173-446-530;²²
- 14 • result from an offset project that will not produce significant
15 adverse environmental impacts after mitigation,²³ and
- 16 • be certified by a recognized registry approved pursuant to the
17 requirements of WAC 173-446-590.²⁴

18 Offset use, however is limited. During the first four-year compliance period
19 (2023-2026), covered entities can cover up to five percent of their allowance
20 through offsets, and half of the offset must be for projects directly benefiting the
21 state.²⁵ In the second four-year compliance period (2027-2030), covered entities
22 can cover four percent of their allowance through offsets, three quarters of which
23 must be from projects directly benefiting the state; provided, however, that the

¹⁶ See RCW 70A.65.170(2)(a).

¹⁷ See RCW 70A.65.170(2)(b)(i); see also WAC 173-446-500(1)(a).

¹⁸ See RCW 70A.65.170(2)(b)(ii); see also WAC 173-446-500(1)(a).

¹⁹ See WAC 173-446-500(1)(b).

²⁰ See WAC 173-446-500(1)(c).

²¹ See WAC 173-446-500(1)(d).

²² See WAC 173-446-500(1)(e).

²³ See WAC 173-446-500(1)(f).

²⁴ See RCW 70A.65.170(2)(b)(i); see also WAC 173-446-500(1)(g).

²⁵ See RCW 70A.65.170(3)(a).

1 Department of Ecology can reduce the three quarters requirement if it is not
2 attainable.²⁶

3 **Q. Are a significant number of offsets available for compliance?**

4 A. No. There is not a significant number of offsets available at this time. The Cap-
5 and-Invest Program has only been in existence for about fifteen months as of the
6 date of this prefiled direct testimony, and not many offset projects have been able
7 to complete the certification process. As of March 31, 2024, the Department of
8 Ecology had issued offset credits for three projects (all located in Ohio) in an
9 aggregate volume of 310,266 offset credits.²⁷ Offsets are a developing market,
10 and PSE will continue to learn more about eligible offset projects and compare
11 the pricing of offset credits to the price of allowances.

12 **2. Entities that Must Comply with the Cap-and-Invest Program**

13 **Q. What entities must comply with the Cap-and-Invest Program established**
14 **under the Climate Commitment Act?**

15 A. The Climate Commitment Act applies to “covered entities” and “opt-in entities.”

16 **a. Covered Entities**

17 **Q. What is a “covered entity” for purposes of the Climate Commitment Act?**

18 A. For the first four-year compliance period of the Climate Commitment Act
19 (January 1, 2023, through December 31, 2026), a “covered entity” is any person

²⁶ See RCW 70A.65.170(3)(b).

²⁷ See Washington Dept. of Ecology, *Ecology Offset Credit Issuance Table*, Pub. No. 23-14-026 (Feb. 2024), available at <https://apps.ecology.wa.gov/publications/documents/2314026.pdf>.

1 that (i) reported emissions pursuant to RCW 70A.15.2200 for any calendar year
2 from 2015 through 2019, (ii) had emissions for any calendar year from 2015
3 through 2019 that equaled or exceeded any of the following thresholds, or (iii) is a
4 first jurisdictional deliverer and imports electricity into Washington during the
5 first compliance period:

- 6 (a) **Facility owner or operator** – A person that owns or
7 operates a facility and the facility’s emissions equal or
8 exceed 25,000 metric tons of carbon dioxide equivalent
9 (“MTCO_{2e}”);²⁸
- 10 (b) **First jurisdictional deliverer who is a generator of**
11 **electricity in the state** – A person that is a first
12 jurisdictional deliverer and generates electricity in
13 Washington and emissions associated with this generation
14 equals or exceeds 25,000 MTCO_{2e};²⁹
- 15 (c) **First jurisdictional deliverer who is importing**
16 **electricity into the state** – A person that is a first
17 jurisdictional deliverer importing electricity into
18 Washington and the cumulative annual total of emissions
19 associated with the imported electricity, whether from
20 specified or unspecified sources, exceeds 25,000
21 MTCO_{2e};³⁰
- 22 (d) **Supplier of fossil fuel other than natural gas** – A person
23 that is a supplier of fossil fuel other than natural gas and
24 from that fuel 25,000 MTCO_{2e} or more of carbon dioxide
25 equivalent emissions would result from the full combustion
26 or oxidation, excluding amounts for fuel products produced
27 or imported with a documented final point of delivery
28 outside of Washington and combusted outside of
29 Washington;³¹ and

²⁸ See RCW 70A.65.080(1)(a); see also WAC 173-446-030(1)(a).

²⁹ See RCW 70A.65.080(1)(b); see also WAC 173-446-030(1)(b).

³⁰ See RCW 70A.65.080(1)(c); see also WAC 173-446-030(1)(c).

³¹ See RCW 70A.65.080(1)(d); see also WAC 173-446-030(1)(d).

1 (e) **Natural gas supplier** – A person supplies natural gas in
2 amounts that would result in exceeding 25,000 MTCO₂e
3 emissions if fully combusted or oxidized, excluding
4 amounts for fuel products produced or imported with a
5 documented final point of delivery outside of Washington
6 and combusted outside of Washington, and excluding the
7 amounts: (1) supplied to covered entities under parts (a)
8 through (d) above; and (2) delivered to opt-in entities;³²

9 **b. Opt-In Entities**

10 **Q. What is an “opt-in entity” for purposes of the Climate Commitment Act?**

11 A. An “opt-in entity” is a party that is not a “covered entity” and does not have an
12 obligation to participate in the Cap-and-Invest Program “but voluntarily
13 participates in the program as authorized under RCW 70A.65.090(3).”³³ Opt-in
14 entities must satisfy the same registration and compliance requirements as
15 covered entities; provided, however, that, an opt-in entities, unlike covered
16 entities, may opt out of the Cap-and-Invest Program at the end of any compliance
17 period by providing written notice to the department at least six months prior to
18 the end of the compliance period.³⁴

19 **Q. Is PSE a “covered entity” or an “opt-in entity” for purposes of the Climate**
20 **Commitment Act?**

21 A. PSE is a covered entity in the first compliance period of the Climate Commitment
22 Act. As a combination entity with electric and natural gas local distribution
23 company (“LDC”) operations, PSE qualifies as a covered entity as both

³² See RCW 70A.65.080(1)(e); see also WAC 173-446-030(1)(e).

³³ WAC 173-446-020 (definition of “opt-in entity”); see also RCW 70A.65.090(3).

³⁴ See RCW 70A.65.090(3).

1 (i) a first jurisdictional deliverer who is a generator of
2 electricity in the state under part (b) of the previous answer
3 and

4 (ii) as a natural gas supplier under part (e) of the previous
5 answer.

6 PSE's status as a covered entity by virtue of being a natural gas supplier,
7 however, is the relevant status for the purposes of this proceeding.

8 **Q. How does the Climate Commitment Act define the term “natural gas
9 supplier”?**

10 A. Although the Climate Commitment Act does not define the term “natural gas
11 supplier,” it does define the term “supplier” by incorporation by reference to a
12 definition present in the Washington Clean Air Act:

13 “Supplier” means a supplier of fuel in Washington state as defined
14 in RCW 70A.15.2200(5)(h)(ii).³⁵

15 The relevant definition of the term “supplier” in the Washington Clean Air Act is
16 as follows:

17 ... the term “supplier” includes: (A) Suppliers that produce,
18 import, or deliver, or any combination of producing, importing, or
19 delivering, a quantity of fuel products in Washington that, if
20 completely combusted, oxidized, or used in other processes, would
21 result in the release of greenhouse gases in Washington equivalent
22 to or higher than [10,000 MTCO₂e annually]; and (B) suppliers of
23 carbon dioxide that produce, import, or deliver a quantity of carbon
24 dioxide in Washington that, if released, would result in emissions
25 equivalent to or higher than [10,000 MTCO₂e annually].³⁶

³⁵ RCW 70A.65.010(64).

³⁶ RCW 70A.15.2200(5)(h)(ii).

1 Similarly, the Department of Ecology rules define the term “supplier” by
2 incorporating by reference a definition of such term found in rules applicable to
3 the reporting of emissions of greenhouse gases under the Washington Clean Air
4 Act:

5 “Supplier” has the same meaning as in chapter 173-441 WAC.³⁷

6 The definition of the term “supplier” in chapter 173-441 WAC is similar, but not
7 identical to, the definition of the term in RCW 70A.15.2200(5)(h)(ii):

8 “Supplier” means any person who is a:

9 (i) Fuel supplier that produces, imports, or delivers, or any
10 combination of producing, importing, or delivering, fuel products
11 in Washington; and

12 (ii) Supplier of carbon dioxide that produces, imports, or
13 delivers a quantity of carbon dioxide in Washington that, if
14 released, would result in emissions in Washington.³⁸

15 As evident from the definition of “supplier” in WAC 173-441-020(1)(q) quoted
16 above, the following definition of the term “fuel supplier” aids in determining
17 applicability to PSE:

18 “Fuel supplier” means any of the following suppliers of fuel
19 products: (See WAC 173-441-122 for more detail.)

20 ...

21 (iii) A supplier of natural gas, including:

22 (A) Operators of interstate and intrastate pipelines;

³⁷ WAC 173-446-020 (definition of “supplier”).

³⁸ WAC 173-441-020(1)(q) (definition of “supplier”).

- 1 (B) Suppliers of liquefied or compressed natural gas;
- 2 (C) Natural gas liquid fractionators;
- 3 (D) Local distribution companies.³⁹

4 As a natural gas LDC utility that imports and delivers natural gas into Washington
5 that, if completely combusted, oxidized, or used in other processes, would result
6 in the release of greenhouse gases in Washington equivalent to or higher than
7 10,000 MTCO_{2e} annually, PSE qualifies as a “natural gas supplier” subject to the
8 Climate Commitment Act. Generally, as a supplier, PSE has a compliance
9 obligation for both (1) customers that purchase a bundled product---natural gas
10 and the associated transportation on PSE’s pipeline system natural gas sold to
11 customers as a bundled product, and (2) customers that only purchase
12 transportation on PSE’s pipeline system and buy the actual natural gas from
13 another entity (except certain customers such as Emissions Intensive Trade
14 Exposed facilities).

15 **B. Establishment of Annual Allowance Budgets Under the Cap-and-Invest**
16 **Program**

17 **Q. Please explain the mechanics of the Cap-and-Invest Program.**

18 A. The Cap-and-Invest Program is a comprehensive market-based mechanism
19 designed to limit anthropogenic emissions of greenhouse gases to achieve the

³⁹ WAC 173-441-020(1)(j) (definition of “fuel supplier”).

1 following greenhouse gas emission targets identified in Engrossed Second
2 Substitute House Bill 2311 and passed in 2020:⁴⁰

- 3 (i) by 2020, a reduction of overall emissions of greenhouse
4 gases in the state to 1990 levels, or ninety million five
5 hundred thousand metric tons;⁴¹
- 6 (ii) by 2030, a reduction of overall emissions of greenhouse
7 gases in the state to fifty million metric tons, or forty-five
8 percent below 1990 levels;⁴²
- 9 (iii) by 2040, a reduction of overall emissions of greenhouse
10 gases in the state to twenty-seven million metric tons, or
11 seventy percent below 1990 levels,⁴³ and
- 12 (iv) by 2050, a reduction of overall emissions of greenhouse
13 gases in the state to five million metric tons, or ninety-
14 five percent below 1990 levels.⁴⁴

15 The Climate Commitment Act required the Department of Ecology to implement
16 a Cap-and-Invest Program that includes mechanisms for the sale and tracking of
17 tradable emissions allowances in accordance with the targets referenced above,
18 along with compliance and accountability measures.⁴⁵ The Climate Commitment
19 Act also directs the Department of Ecology to design allowance auctions to allow
20 for linkage to similar programs in other jurisdictions as much as possible.⁴⁶

⁴⁰ Engrossed Second Substitute House Bill 2311 (amending RCW 70.235.020), available at <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/2311-S2.SL.pdf?q=20240408121613>. RCW 70.235.020 was later recodified as RCW 70A.45.020).

⁴¹ See RCW 70A.45.020(1)(a)(i).

⁴² See RCW 70A.45.020(1)(a)(ii).

⁴³ See RCW 70A.45.020(1)(a)(iii).

⁴⁴ See RCW 70A.45.020(1)(a)(iv).

⁴⁵ See generally RCW 70A.65.060.

⁴⁶ RCW 70A.65.060(3).

1 **Q. How did the Climate Commitment Act determine the number of allowances**
2 **for the first compliance period (January 1, 2023, through December 31,**
3 **2026)?**

4 A. The Climate Commitment Act required the Department of Ecology to determine
5 an emissions baseline based on the total greenhouse gas emissions of covered
6 entities based on the total anthropogenic greenhouse gas emissions in the state
7 during 2015 through 2019.⁴⁷ Then, the Climate Commitment Act required the
8 Department of Ecology to “adopt annual allowance budgets for the first
9 compliance period of the program, calendar years 2023 through 2026, to be
10 distributed from January 1, 2023, through December 31, 2026.”⁴⁸

11 **Q. Did the Department of Ecology determine an emissions baseline based on the**
12 **total anthropogenic greenhouse gas emissions in the state during 2015**
13 **through 2019?**

14 A. Yes. The Department of Ecology determined an emissions baseline of 68,052,220
15 MTCO₂e per year based on the total anthropogenic greenhouse gas emissions in
16 the state during 2015 through 2019.⁴⁹

⁴⁷ See RCW 70A.65.070(1); see generally WAC 173-446-200.

⁴⁸ RCW 70A.65.070(1).

⁴⁹ See WAC 173-446-200(5) (Table 200-1).

1 **Q. Did the Department of Ecology adopt annual allowance budgets for the first**
2 **four-year compliance period (January 1, 2023, through December 31, 2026)**
3 **of the Cap-and-Invest Program?**

4 A. Yes. The Department of Ecology adopted the following annual allowance budgets
5 for the first compliance period of the Cap-and-Invest Program:⁵⁰

Table 1. Annual Allowance Budgets for the First Compliance Period of the Cap-And-Invest Program

Emissions Year	Total Covered Emissions (MTCO_{2e})
2023	63,288,565
2024	58,524,909
2025	53,761,254
2026	48,997,598

6 **Q. Did the Department of Ecology adopt annual allowance budgets for**
7 **subsequent four-year compliance periods of the Cap-and-Invest Program?**

8 A. Not yet. By October 1, 2026, the Department of Ecology must calculate a new
9 emissions baseline by determining the proportionate share of the total greenhouse
10 gas emissions of new covered entities in the first compliance period. This baseline
11 will determine the annual allowance budgets for the second compliance period of
12 the Cap-and-Invest Program (January 1, 2027, through December 31, 2030).⁵¹

⁵⁰ See WAC 173-446-210(2) (Table 210-1).

⁵¹ See RCW 70A.65.070(1)(b); see also WAC 173-446-200(3).

1 By October 1, 2028, the Department of Ecology must adopt a rule that determines
2 annual allowance budgets for the third compliance period (January 1, 2031,
3 through December 31, 2031).⁵²

4 **Q. Does the Department of Ecology adopt annual allowance budgets for**
5 **industry segments or individual covered or opt-in entities?**

6 A. No. The annual allowance budgets adopted by the Department of Ecology apply
7 to all covered and opt-in entities in the state. In this regard, the annual allowance
8 budgets are state- and economy-wide. There are no suballocations to particular
9 industry segments or individual covered or opt-in entities.

10 **C. Auctions of Allowances Under the Cap-and-Invest Program**

11 **Q. How many auctions of allowances does the Department of Ecology conduct in**
12 **each four-year compliance period?**

13 A. The Climate Commitment Act requires the Department of Ecology to conduct no
14 fewer than four auctions of allowances per year,⁵³ not including any necessary
15 allowance price containment reserve (“APCR”) auctions.⁵⁴ Therefore, the
16 Department of Ecology must conduct at least 16 auctions of allowances in each
17 four-year compliance period.

⁵² See RCW 70A.65.070(1)(c); see also WAC 173-446-200(4).

⁵³ See RCW 70A.65.100(2)(a); see also WAC 173-446-300(1).

⁵⁴ Please see Section II.II.C.II.C.5 of this prefled direct testimony for a discussion of the APCR mechanism and APCR auctions.

1 **1. Structure of Cap-and-Invest Program Auctions as Sealed-Bid,**
2 **Uniform Price Auctions**

3 **Q. Please generally describe the Cap-and-Invest Program auctions conducted by**
4 **the Department of Ecology.**

5 A. Cap-and-Invest Program auctions are sealed-bid auctions. These auctions are not
6 the classic highest-bidder-take-all auctions seen in the movies or in sales of
7 priceless art. Instead, the Cap-and-Invest Program auctions are uniform price
8 auctions in which each successful bidder pays the marginal bid, or the lowest
9 successful bid submitted in the auction:

10 In the uniform-price auction, all bidders pay the same price for the
11 units sold. In a sealed-bid uniform-price auction, bidders submit a
12 demand schedule specifying the quantity demanded at each price.
13 The demand schedules are aggregated and the price at which
14 demand equals supply is the market price. Bidders know that the
15 price is determined by the marginal bid, and they face a trade off
16 between bidding higher to increase the chance to win more units
17 and paying more for inframarginal units.⁵⁵

18 In the Department of Ecology auctions, each bidder submits one or more sealed
19 bids. Each bid designates that number of allowances desired and the price the
20 bidder is willing to pay for that number of allowances. Bidders can choose to
21 submit a single bid up to the entity's purchase limit or a series of bids at different
22 prices. Bid volumes are determined by indicating the number of lots. Except for

⁵⁵ Anne E. Cumpston & Peyman Khezr, *Multi-Unit Auctions: A Survey of Theoretical Literature*, Munich Personal RePEc Archive Paper No. 101336, June 29, 2020, <https://mpra.ub.uni-muenchen.de/101336/>.

1 the final lot, one bid lot equals 1,000 allowances.⁵⁶ The final lot may consist of
2 fewer than 1,000 allowances if fewer than 1,000 allowances remain.⁵⁷

3 The Department of Ecology awards allowances first to the highest bidders, selling
4 them the number of allowances requested, then to the second-highest bidders, and
5 so forth until the supply of allowances is exhausted. All bidders then pay the
6 “settlement price” which is a uniform price per allowance equal to the lowest
7 winning bid (i.e., the lowest bid that received one or more compliance units),
8 regardless of the actual price bid submitted by the bidder.

9 **Q. How does the Department of Ecology publish results of auctions conducted**
10 **under the Climate Commitment Act?**

11 A. The Department of Ecology must publish a written summary of each auction
12 conducted under the Climate Commitment Act no later than 45 days following the
13 conclusion of an auction.⁵⁸ The Department of Ecology reports must include the
14 following information:

- 15 (i) the settlement price for the auction;⁵⁹
- 16 (ii) the registered entities granted permission by the
17 Department of Ecology to participate in the auction;⁶⁰
- 18 (iii) details regarding
 - 19 (a) the number of allowances sold,

⁵⁶ See WAC 173-446-345(1).

⁵⁷ See WAC 173-446-345(2).

⁵⁸ See WAC 173-446-362(1).

⁵⁹ See WAC 173-446-362(1)(a).

⁶⁰ See WAC 173-446-362(1)(b).

1 (b) the number of each vintage year of allowances sold, and

2 (c) a description of how the allowances were distributed
3 among the registered entities who submitted bids, without
4 identifying which registered entities purchased the
5 allowances.⁶¹

6 Additionally, the Department of Ecology must transmit a summary results report
7 and a post-auction public proceeds report to the Environmental Justice Council no
8 later than 60 days following the conclusion of an auction.⁶²

9 **2. Participation by Registered Entities**

10 **Q. Who may participate in Cap-and-Invest Program auctions?**

11 A. Cap-and-Invest Program auctions are open to covered entities, opt-in entities, and
12 general market participants. As mentioned previously, covered entities are those
13 who have a regulatory obligation to participate in the Cap-and-Invest Program.⁶³

14 Opt-in entities are entities with greenhouse gas emissions in the state that do not
15 meet the qualifications necessary to be covered entities (e.g., emissions of 25,000
16 MTCO_{2e} or more) but elect to participate in the Cap-and-Invest Program on a
17 voluntary basis.⁶⁴

18 General market participants are entities registered with the Department of
19 Ecology that are not covered entities or opt-in entities. Instead, general market
20 participants seek to participate in the Cap-and-Invest Program to purchase, hold,

⁶¹ See WAC 173-446-362(1)(c).

⁶² See WAC 173-446-362(2).

⁶³ See RCW 70A.65.090(23); see also WAC 173-446-020 (definition of “opt-in entity”).

⁶⁴ See RCW 70A.65.090(3); see also WAC 173-446-020 (definition of “covered entity”), WAC 173-446-050(2) and (3).

1 sell, or voluntarily retire allowances.⁶⁵ Many of these general market participants
2 seek to make a market in allowances (i.e., purchasing and selling allowances to
3 make a profit and not for purposes of compliance) by purchasing allowances in
4 Cap-and-Invest Program auctions and selling them in secondary markets for
5 allowances.

6 **3. Bid Guarantees**

7 **Q. Are there any credit requirements for participation in a Cap-and-Invest**
8 **Program auction?**

9 A. Yes. A registered entity seeking to submit a bid into a Cap-and-Invest Program
10 auction must provide a bid guarantee in an amount that is greater than or equal to
11 the registered entity's proposed maximum bid value.⁶⁶ If, for example, a
12 registered entity seeks to submit bid for up to 500,000 allowances at a price of
13 \$40 per allowances, then the registered entity must submit a bid guarantee of
14 \$20 million in the form of a wire transfer, irrevocable letter of credit, or bond. A
15 bid guarantee must be valid for at least 26 calendar years following the day of the
16 auction or sale.⁶⁷

⁶⁵ See RCW 70A.65.090(39); see also WAC 173-446-020 (definition of "general market participant").

⁶⁶ See RCW 70A.65.100(5); see also WAC 173-446-325.

⁶⁷ See *id.*

1 **4. Auction Floor and Ceiling Prices**

2 **Q. Are there any rules that restrict the bid prices submitted by registered**
3 **entities in a Cap-and-Invest Program auction?**

4 A. Yes. There is both an auction floor price⁶⁸ and an auction ceiling price.⁶⁹ The
5 auction floor price for calendar year 2023 was \$22.20 per allowance,⁷⁰ and the
6 auction ceiling price for calendar year 2023 was \$81.47 per allowance.⁷¹

7 The auction floor price and the auction ceiling price increase annually by the sum
8 of (i) five percent plus (ii) the rate of inflation as measured by the most recently
9 available 12 months of the consumer price index for all urban consumers as of the
10 first business day in December of the prior year.⁷²

11 **5. APCR Mechanism**

12 **Q. Does the Cap-and-Invest Program contain other mechanisms designed to**
13 **stabilize the price of allowances?**

14 A. Yes. The Cap-and-Invest Program contains a mechanism designed to stabilize the
15 price of allowances called the APCR mechanism.⁷³ For the first compliance

⁶⁸ See RCW 70A.65.150(1) (requiring auction floor prices); see also WAC 173-446-335(1)-(3) (establishing the methodology for calculation of auction floor prices).

⁶⁹ See RCW 70A.65.160 (requiring auction ceiling prices); see also WAC 173-446-335(4)-(6) (establishing the methodology for calculation of auction ceiling prices).

⁷⁰ See Wash. Dep't of Ecology, *Washington Cap-and-Invest Program: 2023 Annual Auction Floor Price Notice*, Pub. No. 22-02-060 (Dec. 1, 2022), available at <https://apps.ecology.wa.gov/publications/documents/2202060.pdf>.

⁷¹ See Wash. Dep't of Ecology, *Washington Cap-and-Invest Program: 2023 Annual Allowance Price Containment Reserve and Price Ceiling Notice*, Pub. No. 22-02-059 (Dec. 1, 2022), available at <https://apps.ecology.wa.gov/publications/documents/2202059.pdf>.

⁷² See WAC 173-446-335(2) & (5).

⁷³ See generally RCW 70A.65.150; see also WAC 173-446-370.

1 period (calendar years 2023-2026), the Climate Commitment Act requires the
2 Department of Ecology to place “no less than two percent of the total number of
3 allowances available from the allowance budgets for those years in an allowance
4 price containment reserve.”⁷⁴ The Department of Ecology elected to exceed the
5 minimum requirements of the Climate Commitment Act and placed

6 (i) five percent of the allowances for each year of the first
7 compliance period (calendar years 2023-2026), and

8 (ii) five percent of the allowances for each year of the second
9 compliance period, as determined without taking into
10 account the increase in the allowance budgets caused by the
11 addition of waste-to-energy facilities as covered entities in
12 the second compliance period.⁷⁵

13 The Department of Ecology auctions allowances set aside in the APCR account at
14 auctions referred to as APCR auctions. Allowances placed in the APCR account
15 do not have a vintage,⁷⁶ are placed directly into the purchaser’s compliance
16 account,⁷⁷ and are intended solely for compliance and not for trade or transfer.

17 **Q. When do APCR auctions occur?**

18 A. The Department of Ecology holds APCR auctions in a limited number of
19 circumstances, including when the settlement price of a Cap-and-Invest Program
20 auction reaches the Tier 1 price for allowances in the APCR account.⁷⁸

⁷⁴ RCW 70A.65.150(2).
⁷⁵ See WAC 173-446-370(1)(c).
⁷⁶ See WAC 173-446-370(1)(a).
⁷⁷ See WAC 173-446-370(1)(b).
⁷⁸ See WAC 173-446-370(2).

1 **Q. What is the Tier 1 price for allowances?**

2 A. The Tier 1 price for allowances is one of two prices relevant to the APCR
3 mechanism. The Tier 1 price is the lower, and the Tier 2 price is the higher, of
4 two prices set by the Department of Ecology for allowances auctions from the
5 APCR account. Bidders in APCR auctions can only make bids at the Tier 1 price,
6 the Tier 2 price, or both.⁷⁹

7 For calendar year 2023, the Tier 1 price was \$51.90 per allowance, and the Tier 2
8 price was \$66.68 per allowance.⁸⁰ Each of the Tier 1 price and the Tier 2 price
9 increases annually by the sum of (i) five percent plus (ii) the rate of inflation as
10 measured by the most recently available 12 months of the consumer price index
11 for all urban consumers as of the first business day in December of the prior
12 year.⁸¹

13 **Q. Can all registered entities participate in APCR auctions?**

14 A. No. Not all registered entities can participate in APCR auctions. The Climate
15 Commitment Act limits participation in APCR auctions to covered entities and
16 opt-in entities.⁸² General market participants are not eligible to participate in
17 APCR auctions.⁸³ As mentioned previously, allowances placed in the APCR
18 account are for compliance only, so only complying entities (i.e., covered entities
19 and opt-in entities) are eligible to participate in APCR auctions.

⁷⁹ See WAC 173-446-335(4)(b).

⁸⁰ See *2023 Annual Allowance Price Containment Reserve and Price Ceiling Notice*, note 71.

⁸¹ See WAC 173-446-335(4)(b).

⁸² See RCW 70A.65.150(4); see also WAC 173-446-335(3).

⁸³ See WAC 173-446-335(3).

1 **Q. Do APCR auctions have the same bid structure as general auctions under the**
2 **Cap-and-Invest Program?**

3 A. No. Whereas general auctions under the Cap-and-Invest Program are sealed-bid,
4 uniform price auctions at which registered entities can submit bids at any price
5 higher than or equal to the applicable allowance price floor and less than or equal
6 to the allowance price ceiling, covered entities and opt-in entities participating in
7 APCR auctions can only make bids at Tier 1 and Tier 2 prices.⁸⁴ The Department
8 of Ecology places any APCR allowances awarded directly into compliance
9 accounts for bidding entities.⁸⁵ Allowances in a compliance account can only be
10 used for compliance and cannot be sold or traded.⁸⁶

11 Under the applicable rules, the Department of Ecology should sell Tier 1
12 allowances first, then Tier 2 allowances.⁸⁷ According to the rules, the auction of
13 Tier 1 allowances continue until the Department of Ecology sells all Tier 1
14 allowances or all bids are filled, whichever occurs first.⁸⁸ If any Tier 1 allowances
15 remain, the Department of Ecology should award them to bidders for Tier 2
16 allowances at the Tier 1 price using a random number selection process that
17 assigns random numbers to each lot bid and awards Tier 1 allowances starting
18 with the lowest random number until all Tier 1 allowances are sold.⁸⁹ The auction

⁸⁴ See WAC 173-446-370(4)(c).

⁸⁵ See WAC 173-446-370(4)(i).

⁸⁶ See WAC 173-446-400(9).

⁸⁷ See WAC 173-446-370(4)(d).

⁸⁸ See *id.*

⁸⁹ See *id.*

1 of Tier 2 allowances should continue until the Department of Ecology sells all
2 Tier 2 allowances or all bids are filled, whichever occurs first.⁹⁰

3 **6. Auction Purchase Limits and Holding Limits**

4 **Q. Could an auction participant monopolize allowances?**

5 A. No. The Climate Commitment Act restricts the number of allowances that
6 participants may purchase in Cap-and-Invest Program auctions (referred to as the
7 “auction purchase limit”)⁹¹ and the number of allowances that participants may
8 hold in their accounts (referred to as the “holding limit”).⁹²

9 The “auction purchase limit” is a “limit on the number of allowances one
10 registered entity or a group of affiliated registered entities may purchase from the
11 share of allowances sold at an auction.”⁹³ For Cap-and-Invest Program auctions
12 conducted in calendar years 2023 and 2024, the auction purchase limit restricts
13 the number of allowances that a covered entity or an opt-in entity can purchase to
14 “not . . . more than 10 percent of the allowances offered during a single auction,”
15 regardless of their compliance obligation.⁹⁴ The auction purchase limit restricts
16 the number of allowances that a general market participant can purchase to
17 “not . . . more than four percent of the allowances offered during a single

⁹⁰ See *id.*

⁹¹ See RCW 70A.65.010(7); see also WAC 173-446-020 (definition of “auction purchase limit”) and WAC 173-446-330.

⁹² See RCW 70A.65.010(41); see also WAC 173-446-020 (definition of “holding limit”) and WAC 173-446-150(2)

⁹³ RCW 70A.65.010(7); WAC 173-446-020 (definition of “auction purchase limit”).

⁹⁴ RCW 70A.65.100(6)(a); see also WAC 173-446-330(1).

1 auction”⁹⁵ and further provides that a general market participant “may not in
2 aggregate own more than 10 percent of total allowances to be issued in a calendar
3 year.”⁹⁶

4 **Q. Does the previous answer suggest that the auction purchase limit**
5 **of ten percent for covered and opt-in entities applies only to Cap-and-Invest**
6 **Program auctions conducted in calendar years 2023 and 2024?**

7 A. Yes. The auction purchase limit of ten percent for covered and opt-in entities
8 applies only to Cap-and-Invest Program auctions conducted in calendar
9 years 2023 and 2024.

10 On March 29, 2024, Governor Jay Inslee signed Engrossed Substitute Senate
11 Bill 6058⁹⁷ into law, which, among other things, amends the Climate
12 Commitment Act to increase the auction purchase limit for covered entities and
13 opt-in entities from ten percent to 25 percent, effective January 1, 2025.⁹⁸
14 Engrossed Substitute Senate Bill 6058 would also increase the auction purchase
15 limit for general market participants from four percent to ten percent, effective
16 upon linkage of the Cap-and-Invest Program with a cap-and-trade program of
17 another jurisdiction, such as the California or Quebec cap-and-trade programs.⁹⁹

⁹⁵ RCW 70A.65.100(6)(b); *see also* WAC 173-446-330(2).

⁹⁶ RCW 70A.65.100(6)(b).

⁹⁷ *See* Engrossed Substitute Senate Bill 6058, available at
<https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/6058-S2.SL.pdf?q=20240408131839>.

⁹⁸ *See* Engrossed Substitute Senate Bill 6058 at section 5 (amending RCW 70A.65.100(6)(a)).

⁹⁹ *See id.* at section 5 (amending RCW 70A.65.100(6)(c)).

1 Please note that the amendments to the Climate Commitment Act set forth in
2 Engrossed Substitute Senate Bill 6058 would go into effect January 1, 2025, only
3 if Initiative Measure No. 2117, which seeks repeal of the Climate Commitment
4 Act, is not approved by a vote of the people in the 2024 general election on
5 November 5, 2024.¹⁰⁰

6 **D. Allocation of No-Cost Allowances to Natural Gas LDC Utilities**

7 **Q. Does the Climate Commitment Act contain provisions unique to natural gas**
8 **LDC utilities designed to mitigate the impact of the Cap-and-Invest Program**
9 **on customers of natural gas LDC utilities?**

10 A. Yes. The Climate Commitment Act provides no-cost allowances to natural gas
11 LDC utilities “[f]or the benefit of ratepayers.”¹⁰¹

12 **Q. Does the Climate Commitment Act require natural gas LDC utilities to use**
13 **no-cost allowances allocated to them in any particular manner?**

14 A. Yes. The Climate Commitment Act requires natural gas LDC utilities to consign
15 no-cost allowances to auction for the benefit for their customers, deposit the
16 allowances for compliance, or a combination of the two.¹⁰² Natural gas LDC
17 utilities may not trade, transfer, or sell no-cost allowances.¹⁰³

¹⁰⁰ See *id.* at section 14.

¹⁰¹ RCW 70A.65.130(1).

¹⁰² See WAC 173-446-240(3).

¹⁰³ See *id.*

1 Furthermore, the Climate Commitment Act requires natural gas LDC utilities to
2 consign an increasing minimum number of no-cost allowances over the first two
3 compliance periods:

4 Beginning in 2023, 65 percent of the no-cost allowances must be
5 consigned to auction for the benefit of customers, including at a
6 minimum eliminating any additional cost burden to low-income
7 customers from the implementation of this chapter. Rules adopted
8 under this subsection must increase the percentage of allowances
9 consigned to auction by five percent each year until a total
10 of 100 percent is reached.¹⁰⁴

11 Table 2 below illustrates the increasing proportion of no-cost allowances that
12 natural gas LDC utilities must consign under the Climate Commitment Act.

**Table 2. Minimum Percentage of
No-Cost Allowances that
Natural Gas LDC Utilities Must Consign**

Calendar Year	Minimum Percentage
2023	65%
2024	70%
2025	75%
2026	80%
2027	85%
2028	90%
2029	95%
2030 and thereafter	100%

¹⁰⁴ RCW 70A.65.130(2)(a); *see also* WAC 173-446-300(2)(b)(ii).

1 **Q. What can natural gas LDC utilities do with revenues received from the**
2 **consignment of no-cost allowances?**

3 A. The Climate Commitment Act requires natural gas LDC utilities to return
4 revenues from no-cost allowances consigned for sale at auction to customers by

5 ...at a minimum eliminating any additional cost burden to low-
6 income customers from the implementation of this chapter;¹⁰⁵ and

7 providing nonvolumetric credits on ratepayer utility bills,
8 prioritizing low-income customers, or used to minimize cost
9 impacts on low-income, residential, and small business customers
10 through actions that include, but are not limited to, weatherization,
11 decarbonization, conservation and efficiency services, and bill
12 assistance.¹⁰⁶

13 Please note that the statutory provision quoted above would permit natural gas
14 LDC utilities to use revenues received from the consignment of no-cost
15 allowances for conservation and efficiency services. In light of the recent
16 enactment of the Washington Decarbonization Act for Large Combination
17 Utilities,¹⁰⁷ PSE must revisit conservation and efficiency programs because that
18 law phases out certain programs:

19 Beginning January 1, 2025, no large combination utility may offer
20 any form of rebate, incentive, or other inducement to residential
21 gas customers to purchase any natural gas appliance or equipment.
22 Until January 1, 2031, rebates and incentives for commercial and
23 industrial gas customers are not included in this requirement.

¹⁰⁵ RCW 70A.65.130(2)(a).

¹⁰⁶ RCW 70A.65.130(2)(b).

¹⁰⁷ Engrossed Substitute House Bill 1589, available at <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1589-S.SL.pdf?q=20240421211331>.

1 Rebates and incentives for electric heat pumps that include natural
2 gas backups may be offered until January 1, 2031.¹⁰⁸

3 At this time, it remains uncertain what conservation and efficiency programs will
4 remain available to (i) residential customers of PSE’s natural gas LDC operations
5 after calendar year 2024 or (ii) commercial and industrial customers of PSE’s
6 natural gas LDC operations after calendar year 2030. Accordingly, PSE may be
7 more constrained than otherwise suggested in the CCA in the methods by which it
8 may return revenues from no-cost allowances consigned for sale sold at auction to
9 customers of PSE’s natural gas LDC operations.

10 **Q. Does the Climate Commitment Act require natural gas LDC utilities to**
11 **discriminate among customers with respect to use of revenues from**
12 **consigned no-cost allowances?**

13 A. Yes. The Climate Commitment Act expressly requires natural gas LDC utilities to
14 discriminate among customers with respect to use of revenues from consigned no-
15 cost allowances. The Climate Commitment Act first requires natural gas LDCs to
16 use revenues to eliminate the cost burden of the program from their low-income
17 customers. With any remaining revenues, the Climate Commitment Act permits
18 natural gas LDC utilities to use revenues from the consignment of no-cost
19 allowances to provide bill credits only to (i) low-income customers and (ii) other
20 customers “at locations connected to a natural gas utility’s system on [or before]
21 July 25, 2021.”¹⁰⁹ The Climate Commitment Act expressly prohibits natural gas

¹⁰⁸ *Id.* at section 8(1).

¹⁰⁹ RCW 70A.65.130(2)(c); *see also* WAC 173-446-300(2)(b)(iii)(C).

1 LDC utilities from using revenues from the consignment of no-cost allowances to
2 provide bill credits to customers (other than low-income customers) at a location
3 connected to the natural gas LDC utility's system after July 25, 2021.¹¹⁰

4 **Q. Does the allocation of no-cost allowances to natural gas LDC utilities remove**
5 **the burden of the Cap-and-Invest Program on customers of those utilities?**

6 A. No. The allocation of no-cost allowances to natural gas LDC utilities is set at an
7 amount that declines annually and is not sufficient nor correlated to remove the
8 burden of the program on customers. Depending on the natural gas LDC utility's
9 baseline allocation, no-cost allowances may eliminate the burden on low-income
10 customers for a certain number of years, but as the allocation declines there will
11 eventually be insufficient no-cost allowances to eliminate the burden to low-
12 income customers. The Climate Commitment Act does not ever eliminate the
13 burden of the Cap-and-Invest Program on the remaining customers of those
14 utilities. Although the intent of the design of the Climate Commitment Act is to
15 help protect customers of natural gas LDC utilities from potential rate increases
16 resulting from the participation of natural gas LDC utilities in the Cap-and-Invest
17 Program, the structure does not eliminate the burden of the Cap-and-Invest
18 Program on these customers, except for limited relief for low-income customers.

¹¹⁰ See RCW 70A.65.130(2)(c); see also WAC 173-446-300(2)(b)(iii)(C).

1 **Q. Please describe how the Department of Ecology allocates no-cost allowances**
2 **to natural gas LDC utilities under the Climate Commitment Act.**

3 A. First, the Department of Ecology used data from the greenhouse gas reports
4 submitted by natural gas LDC utilities pursuant to WAC 173-441-122(4) for
5 calendar years 2015 through 2019 to assign an allocation baseline to each natural
6 gas LDC utility.¹¹¹

7 Then, the Department of Ecology distributed no-cost allowances to natural gas
8 LDC utilities for calendar year 2023 in a total amount that is equal to 93 percent
9 of the utility's allocation baseline calculated for calendar years 2015
10 through 2019.¹¹² The total number of no-cost allowances for calendar years 2024
11 through 2030 allocated by the Department of Ecology to natural gas LDC utilities
12 will "decrease[] annually relative to the previous year by an additional seven
13 percent of the [natural gas] utility's allocation baseline."¹¹³ The result of the
14 declining number of no-cost allowances allocated to natural gas LDC utilities is
15 that the protections afforded by this provision of Climate Commitment Act will
16 decline substantially over the first two compliance periods. Furthermore, the
17 allocation of no-cost allowances to natural gas LDC utilities decrease

18 (i) at an annual rate of 1.8 percent during the period beginning
19 January 1, 2031, and ending December 31, 2042,¹¹⁴ and

¹¹¹ See RCW 70A.65.110(3); see also WAC 173-446-240(1).

¹¹² See WAC 173-446-240(2)(a)(i).

¹¹³ WAC 173-446-240(2)(a)(ii).

¹¹⁴ See WAC 173-446-240(b).

(ii) at an annual rate of 2.6 percent during the period beginning January 1, 2043, and ending December 31, 2049.¹¹⁵

To illustrate the impact of the declining allocation of no-cost allowances to natural gas LDC utilities, Table 3 below assumes that the customers of a natural gas LDC utility had greenhouse gas emissions during the 2015 through 2019 period such that the Department of Ecology would establish an allocation baseline of one million MTCO₂e, or one million allowances.

Table 3. Illustrative Allocation of No-Cost Allowances to a Natural Gas LDC Utility with an Allowance Baseline of One Million MTCO₂e

Illustrative Baseline (2015-2019): 1,000,000 MTCO₂e

Calendar Year	No-Cost Allowances to be Allocated to a Natural Gas LDC Utility	Percent Reduction in Allocation of No-Cost Allowances from Prior Year
2023	930,000	N/A
2024	860,000	7.53%
2025	790,000	8.14%
2026	720,000	8.86%
2027	650,000	9.72%
2028	580,000	10.77%
2029	510,000	12.07%
2030	440,000	13.73%

As demonstrated in Table 3 above, the number of no-cost allowances allocated to the natural gas LDC utility to benefit customers in calendar year 2030 will be less than half of the number of no-cost allowances allocated to the natural gas LDC utility to benefit customers in calendar year 2023.

¹¹⁵ See WAC 173-446-240(c).

1 **E. Compliance and Enforcement**

2 **1. General Compliance Obligation**

3 **Q. What compliance obligations do covered and opt-in entities have under the**
4 **Climate Commitment Act?**

5 A. The Climate Commitment Act establishes two different compliance obligations
6 for covered and opt-in entities. The first is an annual compliance obligation and
7 the second is a compliance obligation over the four-year compliance period:

8 A covered or opt-in entity has a compliance obligation for its
9 emissions during each four-year compliance period, with the first
10 compliance period commencing January 1, 2023. The [Department
11 of Ecology] shall by rule require that covered or opt-in entities
12 annually transfer a percentage of compliance instruments, but must
13 fully satisfy their compliance obligation, for each compliance
14 period.¹¹⁶

15 Covered and opt-in entities satisfy the compliance obligation by transferring
16 compliance instruments (allowances or offset credits) to their holding accounts:

17 Compliance occurs through the transfer of the required compliance
18 instruments or price ceiling units, on or before the transfer date,
19 from the holding account to the compliance account of the covered
20 or opt-in entity as described in RCW 70A.65.080.¹¹⁷

21 **Q. Please describe the annual compliance obligation established by the**
22 **Department of Ecology under the Climate Commitment Act.**

23 A. The annual compliance obligation under the Climate Commitment Act requires
24 covered and opt-in entities to have sufficient compliance instruments (allowances

¹¹⁶ RCW 70A.65.310(1).

¹¹⁷ RCW 70A.65.310(2).

1 or offsets) in their compliance accounts by November 1 to cover at least thirty
2 percent of their covered emissions for the previous calendar year:

3 By 5:00 p.m. Pacific Time November 1st of 2024 and each year
4 thereafter, each covered entity and opt-in entity must have in its
5 compliance account sufficient compliance instruments of former
6 vintage years to cover at least 30 percent of its covered emissions
7 for the previous calendar year.¹¹⁸

8 To illustrate, if a covered entity has covered emissions of one million MTCO₂e in
9 calendar year 2023, then the covered entity must hold at least 300,000 compliance
10 instruments (allowances or offset credits) of 2023 vintage in its compliance
11 account by November 1, 2024, to comply with this annual compliance obligation.

12 **Q. Please describe the compliance obligation for the four-year compliance**
13 **period established by the Department of Ecology under the Climate**
14 **Commitment Act.**

15 A. The compliance obligation for the four-year compliance period requires covered
16 and opt-in entities to have sufficient compliance instruments (allowances or
17 offsets) in their compliance accounts by November 1 of the year following the
18 final year of each four-year compliance period to cover all covered emissions for
19 that compliance period:

20 By 5:00 p.m. Pacific Time November 1st of the year following the
21 final year of each compliance period, each covered entity and each
22 opt-in entity must have transferred to its compliance account one
23 compliance instrument for each metric ton of covered emissions of
24 carbon dioxide equivalent emitted by that party during the
25 compliance period. Except as provided in (a) and (b) of this

¹¹⁸ WAC 173-446-600(3).

1 subsection, allowances used for compliance under this provision
2 must be of the vintage of any year of the compliance period or of
3 any prior year.

4 (a) When using allowances for compliance, EITE facilities
5 may provide future vintage allowances obtained as described in
6 WAC 173-446-260 in the process of reconciling their compliance
7 obligation for a given year with their actual production data for
8 that year.

9 (b) Allowances obtained from the allowance price containment
10 reserve may be used for compliance at any time.¹¹⁹

11 To illustrate, if a covered entity has covered emissions of four million MTCO_{2e}
12 over the first compliance period (calendar years 2023-2026) then the covered
13 entity must hold at least four million compliance instruments (allowances or
14 offset credits) in its compliance account by November 1, 2027, to comply with its
15 compliance obligation over that compliance period.

16 **2. Compliance APCR Auctions**

17 **Q. What can a covered or opt-in entity do if it finds itself with insufficient**
18 **compliance instruments as it nears a deadline for annual compliance or for**
19 **the four-year compliance period?**

20 A. If a covered or opt-in entity finds itself with insufficient compliance instruments
21 as it nears a deadline for annual compliance or for the four-year compliance
22 period, the covered or opt-in entity may participate in an APCR auction
23 (sometimes referred to as a compliance APCR auction) that the Department of

¹¹⁹ WAC 173-446-600(4).

1 Ecology must hold before the compliance deadline of November 1.¹²⁰ The
2 Department of Ecology conducts this compliance APCR auction to allow covered
3 and opt-in entities to purchase allowances needed for compliance if they are short.

4 **Q. Must the Department of Ecology conduct a compliance APCR auction even if**
5 **the settlement prices in general auctions held during that year never reach**
6 **the Tier 1 price?**

7 A. Yes. The Department of Ecology will conduct compliance APCR auctions before
8 each annual compliance deadline, regardless of the settlement prices of any
9 general auction conducted in that year. Unlike a general APCR auction, a
10 compliance APCR auction does not depend upon the settlement price in any
11 general auction reaching or exceeding the Tier 1 price for that year.

12 **Q. Did the Department of Ecology conduct a compliance APCR auction in**
13 **calendar year 2023?**

14 A. No. The Department of Ecology did not conduct a compliance APCR auction in
15 2023 because the first compliance deadline is November 1, 2024.¹²¹ Therefore,
16 the first compliance APCR auction should occur prior to November 1, 2024.

17 **3. Price Ceiling Unit Sales**

18 **Q. What occurs if there are no APCR allowances in the APCR account for the**
19 **Department of Ecology to conduct a compliance APCR auction or**

¹²⁰ See WAC 173-446-370(2)(c).

¹²¹ See WAC 173-446-400(2).

1 **insufficient APCR allowances in the APCR account for the Department of**
2 **Ecology to meet the demand of covered and opt-in entities for such**
3 **allowances in a compliance APCR auction?**

4 A. If there are no APCR allowances in the APCR account for the Department of
5 Ecology to conduct a compliance APCR auction or insufficient APCR allowances
6 in the APCR account for the Department of Ecology to meet the demand of
7 covered and opt-in entities for such allowances in a compliance APCR auction, a
8 covered or opt-in entity may acquire price ceiling units from the Department of
9 Ecology to meet its compliance obligation.

10 **Q. What is a price ceiling unit?**

11 A. The Climate Commitment Act provides a rather vague definition for the term
12 “price ceiling unit”:

13 “Price ceiling unit” means the units issued at a fixed price by the
14 [Department of Ecology] for the purpose of limiting price
15 increases and funding further investments in greenhouse gas
16 reductions.¹²²

17 Each price ceiling unit covers the compliance obligation for the emission of
18 one (1) MTCO_{2e}.¹²³

19 Although the purpose of price ceiling units may not be evident from this
20 definition, the purpose becomes evident in later sections of the Climate
21 Commitment Act.

¹²² RCW 70A.65.010(57); *see also* WAC 173-446-020 (definition of “price ceiling unit”).

¹²³ *See* WAC 173-446-380(2).

1 **Q. What is the purpose of a price ceiling unit?**

2 A. The Climate Commitment Act requires the Department of Ecology to issue price
3 ceiling units and conduct price ceiling unit sales to provide cost protection for
4 covered entities in the event that no APCR allowances remain in the APCR
5 reserve.¹²⁴ The Climate Commitment Act limits the purchase of price ceiling units
6 to covered entities that

7 do not have sufficient eligible compliance instruments in their
8 holding and compliance accounts for the current compliance period
9 and these entities may only purchase what they need to meet their
10 compliance obligation for the current compliance period.¹²⁵

11 Like APCR allowances, price ceiling units may not be sold or transferred.¹²⁶ Price
12 ceiling units must be retired for compliance in the current compliance period.¹²⁷

13 **Q. What are the requirements for price ceiling unit sales?**

14 A. The Department of Ecology only conducts price ceiling unit sales between the last
15 APCR auction before the compliance deadline for a compliance period and the
16 compliance period deadline.¹²⁸ The Department of Ecology may only sell price
17 ceiling units at the ceiling price established for the year in which they are sold.¹²⁹

18 To engage in a price ceiling unit sale, a covered entity must request that the
19 Department of Ecology conduct such sales at least ten days before the

¹²⁴ See RCW 70A.65.160(2); see also WAC 173-446-380(1).

¹²⁵ *Id.*

¹²⁶ *See id.*

¹²⁷ *See id.*

¹²⁸ See WAC 173-446-385(1).

¹²⁹ See WAC 173-446-385(2).

1 immediately upcoming deadline for a compliance period.¹³⁰ The covered entity
2 must

3 provide an accounting to ecology showing that it has insufficient
4 compliance instruments to meet its compliance obligations for the
5 immediately upcoming deadline for a compliance period. This
6 accounting must include any confirmed and finalized agreements
7 to transfer compliance instruments to the covered entity prior to the
8 compliance deadline.¹³¹

9 If the covered entity satisfies the requirements for a price ceiling unit sale, the
10 covered entity can purchase price ceiling units during a period no earlier than
11 ten business days after the previous APCR auction and no later than
12 seven business days thereafter.¹³² After a price ceiling unit sale, the Department of
13 Energy will transfer the purchased price ceiling units directly to the compliance
14 account for a purchase for retirement at the immediately upcoming compliance
15 deadline.¹³³

16 **Q. What are the requirements for price ceiling unit sales?**

17 A. The Department of Ecology only conducts price ceiling unit sales between the last
18 APCR auction before the compliance deadline for a compliance period and the
19 compliance period deadline.¹³⁴ The Department of Ecology may only sell price
20 ceiling units at the ceiling price established for the year in which they are sold.¹³⁵

¹³⁰ See WAC 173-446-385(3).

¹³¹ WAC 173-446-385(4).

¹³² See WAC 173-446-385(6).

¹³³ See WAC 173-446-385(8); see also RCW 70A.65.160(2).

¹³⁴ See WAC 173-446-385(1).

¹³⁵ See WAC 173-446-385(2).

1 **Q. How do compliance APCR auction and price ceiling unit sales benefit**
2 **covered entities?**

3 A. Compliance APCR auction and price ceiling unit sales benefit covered entities by
4 providing price protection and certainty. If the Department of Ecology were to
5 exhaust the number of allowances from its general or APCR account, then the
6 covered and opt-in entities may find themselves with a difficult situation of
7 choosing not to comply or purchasing allowances on the secondary market at
8 prices that might exceed one or more of the Tier 1, the Tier 2, or the auction
9 ceiling prices established by the Department of Ecology for that year.

10 The compliance APCR allowance ensures that covered and opt-in entities would
11 have the opportunity to purchase the necessary allowances to achieve compliance
12 at Tier 1 and/or Tier 2 prices, assuming that there are APCR allowances available
13 in the APCR account for sale.

14 Even if no APCR allowances remain available in the APCR account for sale,
15 price ceiling unit sales ensure that covered entities will be able to acquire
16 sufficient ceiling price units to achieve compliance during any compliance period
17 at the auction ceiling price.

18 In short, compliance APCR auctions and price ceiling unit sales ensure that a
19 covered entity, such as PSE, should never be in a situation in which it cannot
20 procure compliance instruments necessary for compliance at exorbitant prices on
21 the secondary markets.

1 **4. Potential Penalties**

2 **Q. What are the consequences if a covered or opt-in entity fails to satisfy the**
3 **compliance obligation for either annual compliance or a compliance period**
4 **by the dates specified by the Department of Ecology?**

5 A. If, notwithstanding the opportunity to purchase compliance instruments at
6 compliance APCR auctions or price ceiling unit sales, a covered or opt-in entity
7 still does not hold sufficient allowances in its compliance accounts to satisfy the
8 compliance obligation for either annual compliance or a compliance period by the
9 dates specified by the Department of Ecology, the initial penalty is that such
10 entity must obtain an additional four allowances for every one allowance that is
11 missing within six months of the specified deadline.¹³⁶ If the entity fails to submit
12 the four allowances for every one allowance missing as required by the initial
13 penalty, the Department of Ecology must impose a monetary penalty of up to
14 \$10,000 per day per violation.¹³⁷ Each MTCO₂e not covered by a compliance
15 instrument constitutes a separate violation, and the Department of Ecology may
16 require a plan and schedule for compliance.¹³⁸ An electric or natural gas LDC
17 utility must notify its retail customers and the Environmental Justice Council in
18 published form within three months after paying a monetary penalty.¹³⁹

¹³⁶ See WAC 173-446-610(1).
¹³⁷ See WAC 173-446-610(3).
¹³⁸ See *id.*
¹³⁹ See WAC 173-446-610(9).

III. CONCLUSION

1

2 **Q. Does this conclude your prefiled direct testimony?**

3 **A. Yes.**