



# ATTORNEY GENERAL OF WASHINGTON

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January 6, 2023

## **SENT VIA WEB PORTAL**

Amanda Maxwell  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

Re: *In the Matter of the Petition of Avista Corporation d/b/a Avista Utilities for an Order Approving Its Four-Year Demand and Resource Supply Forecast Pursuant to the Climate Commitment Act, Docket UE-220770*

*In the Matter of PacifiCorp's d/b/a Pacific Power & Light Company Petition Requesting Approval of Forecasts Pursuant to RCW 70A.65.120, Docket UE-220789*

*In the Matter of the Petition of Puget Sound Energy, Inc., for an Order Approving PSE's Forecasts Pursuant to RCW 70A.65.120, Docket UE-220797*

Dear Director Maxwell:

The Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments regarding the notice requiring petitions requesting approval of forecasts pursuant to RCW 70A.65.120. Public Counsel appreciates the opportunity to comment. We also appreciate Avista, PacifiCorp, and PSE's responses to informal data requests. Public Counsel previously submitted comments to the Department of Ecology (Ecology) on its draft rule of Chapter 173-446 of the Climate Commitment Act (CCA). Ecology revised the rule language to address most of our concerns. Ecology put in place an annual true-up mechanism in Chapter 173-446 to adjust utility no cost allowances each year depending on verified emissions. WAC 173-446-230(2)(g)<sup>1</sup> states the following:

The initial allocation of allowances will be adjusted as necessary to account for any differential between the applicable reported greenhouse gas emissions for the prior years for which reporting data are available and verified in accordance with chapter

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<sup>1</sup> See WAC 173-446-230(2)(g).

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173-441 WAC and the number of allowances that were allocated for the prior year through this process.

Public Counsel believes it is appropriate to permit annual updates to the four-year demand and resource supply forecasts; however, Public Counsel would like to raise a few procedural and policy concerns that remain regarding approval of the forecasts, use of allowances, consignment of allowances, and supply and demand forecast documentation.

**A. Approval of Forecasts Should not Pre-empt CEIP or IRP Processes**

The rule language states that the supply and demand forecasts may be based on a clean energy implementation plan (CEIP) for a utility that is *submitted* pursuant to chapter 19.405 RCW, the Washington Clean Energy Transformation Act (CETA). However, two major utilities are currently facing opposition to their filed CEIPs. Puget Sound Energy’s (PSE) CEIP is under litigation, and its renewable energy targets, which are a crucial element of estimating PSE’s emissions, are a point of contention amongst the parties. PSE’s CEIP adjudication schedule indicates that the case may not be resolved before these CCA forecasts are approved. PacifiCorp’s CEIP is subject to review in Docket UE-210829. PacifiCorp also is currently involved in a complaint proceeding in Docket UE-220376 (Complaint) before the Utilities and Transportation Commission (UTC or Commission). In the Complaint, the UTC Staff proposes penalties for alleged violations of the CETA statute, Commission rules, and a Commission order regarding PacifiCorp’s failure to include the social cost of greenhouse gas emissions in PacifiCorp’s CEIP. On December 1, 2022, the UTC Staff filed its Motion to Withdraw Complaint (Motion) and the Settlement Agreement to Withdraw Staff’s Complaint (Settlement), both of which also are pending before the Commission. Public Counsel opposes both the Motion and the Settlement. The pendency of these Dockets renders any forecasted emissions estimates for PacifiCorp stated in its CEIP uncertain because there is no schedule in either docket indicating when the CEIP will be finalized.

Ecology’s reliance on CEIPs that are submitted rather than approved results in forecasts would be premature, and we recommend that the approval of CCA forecasts do not pre-empt the CEIP process. Ecology has stated that it will update its schedule of allowances “if a revised forecast of supply and demand is approved in a form and manner consistent with the requirements of this section by July 30th of the same calendar year.”<sup>2</sup> The Commission should require that utilities update their CCA forecasts if they are based on a submitted CEIP that have materially different interim targets (such as a five or 10 percent difference) than the utility’s most recently approved CEIP.

**B. Require Utilities to Report Use of Allowances and Allowance Corrections**

A number of participants requested that Ecology create a reporting requirement for utilities to report how they use revenues received from the consignment process. Ecology agreed that

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<sup>2</sup> See WAC 173-446-230(2)(i)(j).

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transparency is important, but it stated that this duty was within the jurisdiction of the Commission when it comes to IOUs.<sup>3</sup> Public Counsel believes that transparency over the usage of no cost allowances will be important for participants and ratepayers, so we recommend that the Commission create a reporting requirement for utilities receiving revenues from the consignment process. Utilities should report how many no cost allowances they consigned for auction, how much they receive in revenues from consignment, and how they use those revenues for the benefit of ratepayers. Additionally, Public Counsel recommends that the UTC require that utilities report their forecasted emissions (for CCA no cost allowance distribution), actual verified emissions, allowances received for emissions, allowances received for administrative costs, and allowance adjustments annually. Public Counsel believes it would be valuable for the Commission and participants to track how allowances are used, how allowance revenues are used for the benefit of ratepayers, and adjustments to allowances.

### **C. Convene Participants to Discuss Consignment for the Benefits of Ratepayers**

While net revenues or costs for allowances that are traded<sup>4</sup> should flow through the various power cost adjustment mechanisms, revenues from no cost allowances should flow entirely to the benefit of ratepayers in keeping with the statutory language. Public Counsel, however, foresees the definition of “for the benefit of ratepayers”<sup>5</sup> becoming a potential point of contention that will require significant participant engagement beyond the discussion in this rulemaking. First, the definition of “for the benefit of ratepayers”<sup>6</sup> can be interpreted extremely broadly, and the statutory language does not provide limitations or guidelines on what would be considered beneficial to ratepayers. This lack of clarity could result in the utilities handling the consignment of allowances differently and providing inconsistent benefits to their respective customers. Additionally, the lack of clarity could result in utilities failing to provide all potential benefits to ratepayers, contrary to the statutory requirements. Second, there are open questions regarding how much is a reasonable amount to go towards bill assistance, decarbonization, conservation, or other types of benefits. Third, because some no cost allowances are allocated because of forecast emissions and others are allocated because of administrative costs, there are open questions regarding prioritization and whether (and how) these should be treated separately. Fourth, the consignment for “the benefit of ratepayers” requires a measurement or evaluation of such benefits. The methods used for measurement or evaluation could be another point of contention. Thus, Public Counsel recommends that the Commission open a docket proceeding to discuss these issues in detail with participants and issue guidance for utilities.

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<sup>3</sup> See Wash. State Dept. of Ecology, *Concise Explanatory Statement Chapter 173-446 WAC Climate Commitment Act Program 233* (2022).

<sup>4</sup> Utilities may choose to purchase or sell allowances beyond those distributed to them at no cost by Ecology for compliance with the CCA.

<sup>5</sup> See WAC 173-446-150(1)(b), WAC 173-446-230(6), WAC 173-446-300(2)(b)(i).

<sup>6</sup> See WAC 173-446-150(1)(b), WAC 173-446-230(6), WAC 173-446-300(2)(b)(i).

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**D. Require Robust Documentation**

Public Counsel would like to reiterate its appreciation for the Company's responses to informal data requests. While the documentation provided in the original filing varied across the three utilities, Public Counsel requests that future CCA forecast filings that rely on CEIPs or IRPs for their numbers include specific references to tables in the CEIP or IRP, so that participants can match what is in the CCA filing with the numbers from the CEIP or IRP. In addition, Public Counsel requests that if the CCA filing numbers differ from the cited tables in the CEIP or IRP, that a detailed calculation be provided that explains the differences. Finally, Public Counsel requests that spreadsheet documentation for CCA filings keep the formulas intact. All of these measures will expedite review of the CCA filing and lessen the need for data requests.

Again, Public Counsel appreciates the opportunity to provide input on utility supply and demand forecasts to comply with the Climate Commitment Act. If you have any questions or would like to discuss these comments, please contact Nina Suetake at (206) 389-2055 or [Nina.Suetake@ATG.WA.GOV](mailto:Nina.Suetake@ATG.WA.GOV), or Aaron Tam at (206) 471-8296 or [Aaron.Tam@ATG.WA.GOV](mailto:Aaron.Tam@ATG.WA.GOV).

Sincerely,

/s/ 

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