BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Petitioner, v. PUGET SOUND ENERGY, Respondent.	DOCKET UG-230968 **JOINT ENVIRONMENTAL ADVOCATES' REPLY BRIEF**

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I. INTRODUCTION

1. This Commission and non-Company Parties in this docket have signaled serious concerns with PSE's chosen CCA compliance pathway. Through testimony, an evidentiary hearing, and initial post-hearing briefs, this adjudication has provided a clearer picture of the nature of risks facing PSE and its customers, harmonized the perspectives of participating environmental and consumer advocates, and confirmed the need for an incentive structure that promotes prudent and responsible CCA compliance by the utility. With support from Staff and Public Counsel, JEA again recommend the Commission adopt the modified risk-sharing mechanism described in their post-hearing briefs.

2. JEA have crafted a moderate risk-sharing mechanism that aims to reduce risk to customers in the longer term by ensuring that, starting as soon as possible, PSE is appropriately incentivized to reduce carbon market exposure. PSE has resisted meeting this Commission's goals to ensure risk is shared and that price incentives go to both the utility and its customers.[1] In its post-hearing brief, PSE doubles down on its approach, misconstrues the CCA, misrepresents the position of other parties in the docket, and makes unfounded critiques of JEA's approach.

II. A RISK-SHARING MECHANISM SHOULD BE ADOPTED IN THIS PROCEEDING

3. In PSE's tariff filing for 2023, the Commission ordered the Company to develop a risk-sharing proposal specifically because pass-through treatment was "inappropriate[]" and harmful to customers.[2] PSE failed to do so, which is how we have arrived at this adjudication.[3]

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[1] *See* Order 01, ¶ 22, Docket UG-230470 (Aug. 3, 2023).

[2] *Id*.

[3] *See* JEA's Post-Hearing Brief, ¶ 9, Docket UG-230968 (Nov. 7, 2024) (citing to Order 01, ¶¶ 7-16, UG 230968 (Dec. 22, 2023)).

4. PSE now claims that the Commission "expressed no clear intent to implement any risk-sharing mechanism," that such a mechanism was simply to be considered, no mechanism should be adopted, and the Commission should end this adjudication satisfied.[4] However, the impropriety of treating Schedule 111 as a pass-through with no risk-sharing remains. PSE wants the Commission to withhold its regulatory authority merely because the issue at hand is complex. That is not, and cannot be, the guiding principle for this Commission. The Commission has already found that risk-sharing is appropriate and should be adopted for CCA compliance.

III. THE CCA DOES NOT PROHIBIT RISK-SHARING

5. As JEA, Public Counsel, and Staff have argued, a risk-sharing mechanism promotes the goals of the CCA and utility regulation in the public interest.[5] PSE claims that a risk-sharing mechanism conflicts with the intent of the CCA, increases risks and costs, and "inserts a strict and permanent mechanism into a nascent program."[6] None of these claims are true.

6. Risk-sharing does not conflict with the CCA. The Company points out the CCA does not expressly authorize such a mechanism.[7] This ignores that the CCA also does not *prohibit* one. There is plainly no express conflict.

7. PSE also argues that there is an implicit conflict because the CCA is intended to send a price signal to customers to encourage them to decarbonize, so any mechanism that

[4] Initial Post-Hearing Brief of Puget Sound Energy, ¶ 8, Docket UG-230968 (Nov. 7, 2024) (hereinafter "PSE's Post-Hearing Brief").

[5] *See* JEA's Post-Hearing Brief, Section IV, Docket UG-230968 (Nov. 7, 2024).

[6] PSE's Post-Hearing Brief ¶ 3.

[7] *Id.* ¶ 7.

affects those price signals conflicts with the CCA.[8] That argument is unsupported[9] and requires reading additional provisions into the statute. To elaborate, JEA agree with PSE that the CCA prices carbon to require that emitters internalize at least some of the costs of their emissions, which had previously been entirely dismissed as unpriced externalities.[10] JEA also agree the cap-and-invest market is structured so that the cost of emitting carbon necessarily increases over time, both due to statute and to the effect of decreasing allowance supply.[11] However, to support the Company's argument about implicit conflict, it seems that PSE argues the CCA's carbon market functions differently for different sectors. That is, PSE claims covered entities that are not utilities are responsible for their emissions and experience the price signal of internalizing carbon costs directly.[12] But, PSE argues, the CCA designates utilities as covered entities only to the extent they must acquire allowances, but they should not experience price signals related to their behavior.[13] PSE essentially claims that the CCA only incentivizes non-utilities to strategize regarding the financial implications of various emissions trajectories, and plan their behavior accordingly—utilities have no analogous incentive.

8. That interpretation strains credulity. It even requires strained phrasing—for instance, PSE argues that the CCA "is intended to send a price signal to encourage

[8] *Id.*

[9] PSE cites to one witness's statement that the CCA "might have looked different" with risk-sharing. Steuerwalt, Tr. 91:8-11.

[10] *See* Steuerwalt, Exh. MS-3T, 6:19-21.

[11] *See* JEA's Post-Hearing Brief ¶ 4.

[12] *See* Steuerwalt, Exh. MS-3T, 8:1-6, 9:15-20 (rationale of cap-and-trade or cap-and-invest); PSE's Post-Hearing Brief ¶ 21 (discussing price signals sent to covered entities).

[13] PSE's Post-Hearing Brief ¶ 7 (price signal to customers, not covered entity).

decarbonization *by people and facilities that have emissions*."[14] Actually, the CCA governs "covered entities," not "people and facilities that have emissions."[15] And the Company's interpretation strains logic. On one hand, PSE argues that the CCA "placed the compliance obligation on covered entities, not customers," and the Company acknowledges that it could and should react to price signals: as the total number of available allowances declines, it can choose to reduce emissions or acquire compliance instruments, "whichever is more cost-effective."[16] But PSE simultaneously argues "the market will directly communicate to customers how they should decarbonize."[17] If the price signal is passed through directly and entirely to customers, the CCA does not incentivize the Company to choose between emissions reductions or acquiring compliance instruments.[18] Therefore total pass-through contradicts the stated goals of the CCA.

9. PSE plays a key role in reducing emissions because of its resource planning decisions. PSE has not identified anything in the text or structure of the CCA that prevents a price signal from reaching the entity with the compliance obligation. Nor has PSE demonstrated that the CCA prohibits the Commission from requiring the Company to bear some of the risk

[14] *Id*.

[15] *See* RCW 70A.65.010(23) (covered entities designated by Ecology); .060 (setting cap to ensure emissions are reduced by covered entities); .070 (setting annual allowance budgets to ensure proportionate reduction limits by covered entities); .080 (further defining "covered entity"); .160 (requiring a price ceiling to provide cost protection for covered entities); .200 (penalties to covered entities); .310 (covered entities' compliance obligations).

[16] PSE's Post-Hearing Brief ¶ 21.

[17] *Id.* ¶ 23.

[18] *See* Initial Post-Hearing Brief of Commission Staff, ¶ 3 n. 11, Docket UG-230968 (Nov. 7, 2024) (hereinafter "Staff's Post-Hearing Brief") (citing to Dockets UE-230172/UE-210852 where the Commission concluded that without the "guardrails" of a risk-sharing mechanism, the utility is likely to ignore market price volatility, engage in risky behavior, and not act in good faith because ratepayers "will bear the economic consequences").

associated with its compliance obligation. A risk-sharing mechanism does not "interfere[]" with the CCA, but rather ensures it is effectuated.

IV. OFFICE OF PUBLIC COUNSEL AND STAFF SUPPORT JEA'S RISK-SHARING APPROACH, AND PSE MISREPRESENTS THE POSITION OF PARTIES IN THIS PROCEEDING

10. JEA, Public Counsel, and Staff have found a great deal of common ground thanks to good faith participation in this docket, a willingness to learn from and understand other parties' positions, and clarify questions or concerns through data requests and cross-examination at hearing. JEA and Public Counsel both recommended adopting JEA's proposed mechanism to address quantity risk and developing an additional component guided by Public Counsel's approach to address price risk.[19] And Staff supports adoption of either of these parties' proposals.[20]

11. PSE misrepresents the position of parties by claiming that "most" besides JEA "now agree that a risk-sharing mechanism is not appropriate at this time" and oppose JEA's proposal.[21] Those misrepresentations are egregious and require detailed correction.

12. As support for the argument that Staff does not support a risk-sharing mechanism, PSE points to Staff's primary recommendation of incorporating the tariff into base rates.[22] It

[19] JEA's Post-Hearing Brief ¶¶ 26, 30; Staff's Post-Hearing Brief ¶¶ 2, 9-10.

[20] Staff's Post-Hearing Brief ¶ 7.

[21] PSE's Post-Hearing Brief ¶¶ 9, 33. PSE has moved to strike portions of JEA's post-hearing brief that restate JEA's recommendations. JEA will file an opposition to the motion. This reply is filed prior to a decision on the motion. Nevertheless, if PSE's motion is granted, the Commission has sufficient evidence on the record through testimony and cross-examination to determine JEA's recommendations. *See* Gehrke, Exh-WG-1T, WG-2, WG-3, WG-4T, WG-5, & WG-6; Earle, Exh. RLE-1CT, 3C, 4C, 8X, & 9X; Earle, Tr. 149:1-25, 150:1-151:24, 152:15-19, 153:1-19 & Gerhke, Tr. 170:14-23 (discussing calculation and application of actual percentiles); Gehrke, Tr. 170:24-171:7 (additional sharing bands for continuous penalty structure); Danner, Tr. 175:22-176:4 & Gehrke, Tr. 176:5-20 (treatment of units above price ceiling).

[22] PSE's Post-Hearing Brief ¶ 9.

omits Staff's recommendation to implement an appropriate risk-sharing mechanism until the next rate filing, its secondary recommendation to maintain a separate tariff with a risk-sharing mechanism, and Staff's rationale for its recommendations—that pass-through treatment unfairly places all risk upon customers and fails to create any incentive for PSE.[23]

13. PSE also misleadingly cites to Staff witness McGuire's testimony to support the Company's claim that risk-sharing is premature and inserts unnecessary complications.[24] The paragraph cited to actually contradicts PSE's argument. Staff states that PSE has not shown that its current tariff is in the public interest and Staff does not support PSE's treatment of Schedule 111 without a risk-sharing mechanism.[25]

14. In its post-hearing brief, Staff clarifies that its goals in testimony were initially to uphold the basic principle that tracking mechanisms like this one should include a risk-sharing mechanism and to analyze PSE's proposal, where it identified concerns that PSE's model canceled out incentives.[26] Neither of those goals conflict with JEA's or Public Counsel's. Staff expressly states it is not opposed to JEA's proposal addressing quantity, or elaborating Public Counsel's proposal addressing price.[27] Most of all, Staff urges this Commission to adopt a mechanism, and improve it as needed where more information is available.[28]

15. As for Public Counsel, its post-hearing brief confirms the need to address price and quantity risks in the same way JEA recommend: adopt JEA's approach to address quantity

[23] Staff's Post-Hearing Brief ¶ 10; McGuire, Exh. CRM-1T at 4:3-18.

[24] PSE's Post-Hearing Brief ¶ 24 n. 51 (citing to McGuire, Exh. CRM-1T at 4:1-2).

[25] McGuire, Exh. CRM-1T at 3:19-4:6.

[26] Staff's Post-Hearing Brief ¶¶ 6-7.

[27] *Id*. ¶ 7.

[28] *Id.*

risk, and develop an additional component to address price risk in time for the conclusion of the first CCA compliance period.[29] PSE claims that Public Counsel's recommendation on risk-sharing is to "simply wait, then try again."[30] Anything more than a cursory reading of Public Counsel's testimony belies that argument. Public Counsel's initial testimony raised certain critiques about each party's recommendations, but it agreed that PSE's proposal posed serious concerns for customers.[31]

16. Here, too, PSE misrepresents Public Counsel's testimony. To support the Company's claim that a risk-sharing mechanism "prematurely inserts unnecessary complications" and thus should not be adopted, the Company cites to a response during cross-examination by Public Counsel's witness, Dr. Earle.[32] He states he was not part of the prior CCA policy docket and so was unaware of prior processes, and that the Commission should continue trying to establish a risk-sharing mechanism "rather than giving up on customers."[33] Dr. Earle's statements in no way support PSE's stance that the status quo of the tariff is acceptable.

17. PSE makes much of disagreement on finer points between parties to argue wholesale against a risk-sharing mechanism.[34] But Staff, Public Counsel, and JEA all agree that PSE's proposal is inappropriate and inadequate, and support JEA's recommendations.

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[29] Public Counsel's Post-Hearing Brief ¶¶ 2, 9-10, 18.

[30] PSE's Post-Hearing Brief ¶ 16.

[31] Earle, Exh. RLE-1CT, 17:2-3 (applying critique to Staff's proposal but noting it is adopted from PSE's proposal); Earle, Tr. 155:1-13 (raising price risk concerns).

[32] PSE's Post-Hearing Brief ¶ 24, n. 50 (citing to Earle, Tr. 138:1-139:9).

[33] Earle, Tr. 138:1-139:9.

[34] PSE's Post-Hearing Brief ¶¶ 11, 30. PSE states AWEC currently opposes a risk-sharing mechanism. AWEC submitted comments one year ago, prior to adjudication in this docket. *Id.* ¶¶ 9, 14-15. AWEC expressed concern over customer costs or disrupting CCA market signals, *see id.* ¶ 14 (citing to AWEC's comments). These concerns have been addressed in the proceeding. *See, e.g.* Earle, Exh. RLE-1T, 6:13-16 (risk-sharing limits costs); JEA's Post-Hearing Brief

V. PSE'S CONCERNS OVER JEA'S MECHANISM ARE UNFOUNDED

18. PSE's two central arguments against JEA's proposal are baseless. First, PSE argues that JEA's mechanism increases risk "because it is focused on emissions reductions rather than compliance instruments."[35] To the contrary, JEA do not ignore the risk posed by compliance instruments. JEA's mechanism squarely focuses on financial risk to customers that results from carbon market exposure, a risk that has few guardrails when the entity tasked with CCA compliance experiences no benefit or loss from that exposure. If PSE fails to seriously pursue decarbonization, it exposes itself to volatile and increasing allowance prices, not to speak of the volatile fossil gas market. PSE views decarbonization as separate from financial responsibility, whereas JEA have demonstrated why those concepts are necessarily intertwined.[36]

19. Second, PSE protests against a 50-basis-points earnings test as "arbitrary" and "extreme" because, allegedly, it could result in a 4% reduction on ROE over four years.[37] PSE's claim is based on a hypothetical scenario in which: 1) the Company overearned to the maximum amount allowed by RCW 80.28.425(6), and 2) the Company acquired such a substantial volume of near-price ceiling allowance units for compliance that its share of the associated costs resulted in a reduction of the Company's return on equity, falling to 50 basis points below the authorized level over the compliance period.

¶¶ 11-16. AWEC did not file testimony, provide a statement or ask questions at the evidentiary hearing, or submit initial post-hearing briefing.

[35] PSE's Post-Hearing Brief ¶ 35.

[36] *See* Gehrke, Tr. 174:22-175:2.

[37] PSE's Post-Hearing Brief ¶ 37. PSE levels a similar critique against Staff's earnings test, *id.* ¶ 31, but PSE's own witness admitted that Staff's test was not drastic in light of overall CCA costs. Mickelson, Tr. 113:21. PSE only accepts an earnings test that has no effect on it.

20. That scenario demonstrates precisely the risks to customers that JEA are concerned about. That is, in that hypothetical, PSE's choice to comply primarily via allowances required it to spend enormous sums on high-cost allowances, despite the Company's ability to control its strategy for acquiring allowances and to access price containment reserve auctions, the secondary market, and no-cost allowances. Given PSE's ability to strategize prudently and opportunities for allowance purchases available to it, this outcome would have been within PSE's control and it is therefore appropriate for the Company to experience consequences. If PSE's feared scenario were to occur, it would signal to PSE the serious flaws with its compliance choice that caused high carbon market exposure, and incentivize it to behave differently to protect shareholders (to the boon of ratepayers as well). Ultimately, unless PSE has completely failed to manage its allowance strategy, PSE will not be adversely affected by risk-sharing. Thus, JEA's proposed earnings test takes a moderate and reasonable approach to drive prospective behavior.[38]

VI. CONCLUSION

21. PSE has failed to carry its burden of proving that its tariff results in fair, just, reasonable, and equitable rates. The work of JEA, Public Counsel, and Staff in this docket to articulate and more deeply understand the risks raised by PSE's compliance pathway signal to this Commission that it should be far from satisfied with the Company's approach. Instead, the Commission should proceed with requiring JEA's proposed risk-sharing mechanism. JEA's proposal delicately balances utility and customer interest, incentivizes appropriate utility strategizing to limit market exposure risks, and aligns with CCA and Commission goals. If the

[38] *See* Gehrke, Tr. 173:9-16 (focusing on the importance of providing incentives to the utility ahead of time).

development of the price risk component requires more process, JEA are willing to assist the Commission and parties with elaborating it. But failing to adopt any mechanism leads us to square one: rates that are unjust, unreasonable, and not in the public interest—and likely to be increasingly more so in the medium- and long-term.

22. For the foregoing reasons, JEA recommend that the Commission adopt their recommendations.

Dated this 21st day of November, 2024.

Respectfully submitted,

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