BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, **Complainant,** **v.** **PUGET SOUND ENERGY,** **Respondent.**	**DOCKET UG-230968**

REPLY BRIEF
OF PUGET SOUND ENERGY

NOVEMBER 21, 2024

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I. INTRODUCTION

1. Puget Sound Energy ("PSE" or "Company") respectfully submits this reply brief to address the arguments raised by the other parties in their initial post-hearing briefs regarding PSE's proposed risk-sharing mechanism for Schedule 111, PSE's tariff for recovering the costs and proceeds of compliance with the Climate Commitment Act ("CCA"). As PSE explained in its initial brief, the Commission should decline to impose a risk-sharing mechanism that contradicts the legislative intent and design of the CCA and harms PSE and its customers. The positions advocated in the opening briefs demonstrate how the current climate of volatile auction prices, uncertainty surrounding natural gas usage, and uncertainty regarding the CCA cap and invest program's operation, all argue against imposing a risk-sharing mechanism at this time. Factors that are out of PSE's control, such as allowance price and quantity, argue against any risk-sharing mechanism at all. A risk-sharing mechanism is unnecessary, unwarranted, and unworkable in the context of the CCA.

II. CHANGED CIRCUMSTANCES AND CHANGED POSITIONS

2. PSE, the Commission Staff ("Staff"), and Public Counsel all agree for various reasons that establishing a risk-sharing mechanism now is unwise. Only Climate Solutions, NW Energy Coalition, and Washington Conservation Action (collectively, "JEA") support a risk-sharing mechanism at all, and JEA radically changed its own proposal in its post-hearing brief. No party supports JEA's initial proposal, and the Commission should not even consider its modified proposal. The positions of the parties in this case have evolved since this issue was first considered, but the uncertainties have only deepened and the reasons against a risk-sharing mechanism have only increased.

A. The Changed Positions and New Proposal Presented in the Opening Briefs Highlight Why the Commission Should Not Impose a Risk-sharing Mechanism

3. The parties in this proceeding have been unable to agree on an appropriate risk-sharing mechanism after multiple attempts in multiple proceedings, and the positions each party propounds in its opening brief underscore the diverging opinions that remain regarding a risk-sharing mechanism. These vast discrepancies demonstrate that if the Commission decides to impose a risk-sharing mechanism now, it will likely be a mechanism that no expert or interested party supports.

1. Staff further walks back its prior support and its prior position

4. As PSE stated in its opening brief, Staff initially supported PSE's proposal to recover costs of allowance purchases and proceeds through Schedule 111.[1] Staff then changed its position and recommended for the first time in response testimony that the Commission eliminate the Schedule 111 tracker altogether.[2] Staff downplays its changed position and states that its initial focus in this proceeding was simply to identify any aspects of PSE's risk-sharing proposal that required amendment, recommending only one change to PSE's proposal – a different earnings test.[3] But now, Staff backs off even advocating for its own earnings test and is suddenly indifferent as to how to proceed.[4]

5. Staff seems to be throwing up its hands and saying that if the Commission still demands a risk-sharing mechanism, it should just pick one. Staff has concluded that whatever mechanism is selected, it will be flawed and will need to be fixed soon, anyway. "Given the level of uncertainty around the volatility of the CCA allowance market in the future, Staff believes that this risk-sharing mechanism will require refinement and reevaluation in future cases."[5] While Staff's position is understandable in this period of uncertainty, it is not acceptable rate making practice. Staff's suggestion that the Commission should just pick a mechanism and fix it later

[1] PSE's Initial Br. at ¶ 12, *citing* Staff's Open Meeting Memorandum at p. 3 (Dec. 21, 2023).
[2] *See* McGuire, Exh. CRM-1T at 31:13-15.
[3] *See* Post-hearing Br. of Staff at ¶ 6.
[4] *See* Post-hearing Br. of Staff at ¶ 7.
[5] Post-hearing Br. of Staff at ¶ 6.

raises serious concerns in light of the Commission's obligation to determine just, reasonable, equitable, and sufficient rates based on substantial evidence following a hearing.[6] Selecting a mechanism that is not even supported by the party proposing it would arguably be arbitrary and contrary to the evidence provided.[7] If there is no suitable risk-sharing mechanism after all this effort, then the Commission should choose no risk-sharing mechanism.[8]

2. Public Counsel opposes all the proposals, calling each risk-sharing mechanism "inadequate"[9]

6. Public Counsel clearly opposes Staff's primary recommendation to eliminate the Schedule 111 tracker and place CCA costs in base rates.[10] However, Public Counsel opposes all the risk-sharing proposals, too. In his cross-answering testimony, Public Counsel witness Dr. Robert Earle testified that JEA's risk-sharing mechanism contained several critical flaws, in addition to replicating many of the problems in Staff's and PSE's proposals.[11] JEA's risk-sharing proposal was therefore Public Counsel's least favorable option. Public Counsel still does not recommend that the Commission accept JEA's proposal because it is "insufficient,"[12] but Public Counsel now suggests the Commission give JEA's proposal serious consideration.[13] As with Staff, Public Counsel's position is by no means support for any risk-sharing mechanism. It is ambivalence, at best.

3. JEA withdraws its own proposal

7. JEA has withdrawn or at least completely redesigned its initial risk-sharing proposal and replaced it with a new risk-sharing mechanism that is unsupported by any evidence and should

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[6] *See* RCW 80.28.020.
[7] A reviewing court will investigate and address the substance of a Commission decision to ensure it was not arbitrary, capricious, or improper on some other ground within the permissible scope of judicial review as prescribed by the administrative procedure act. *People's Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm'n*, 104 Wn.2d 798, 817–18, 711 P.2d 319, 330 (1985).
[8] Public Counsel evidently agrees: "I think it's vital that the Commission not adopt an ineffective risk-sharing mechanism." Earle, TR. 142:7-8.
[9] Br. of Public Counsel at ¶ 18.
[10] *See* Br. of Public Counsel at ¶ 21.
[11] *See* Earle, Exh. RLE-1CT at 24:14-18.
[12] Br. of Public Counsel at ¶ 19.
[13] *See* Br. of Public Counsel at ¶ 19.

be disregarded by the Commission.[14] The Commission should reject JEA's *initial* risk-sharing mechanism for the reasons set forth in the prefiled testimonies and exhibits of PSE, Staff, and Public Counsel, and as summarized in briefing. Given the extensive modifications, it is clear even JEA no longer supports its own initial risk-sharing mechanism. The Commission should also reject JEA's *modified* risk-sharing proposal for the reasons set forth in PSE's Motion to Strike, especially because it introduces several adjustments that are wholly unsupported by any evidence since they were introduced after the record closed in this proceeding.[15]

8. Further, while JEA acknowledges the fatal flaws in its initial proposal, JEA's modified proposal fails to correct them. Dr. Earle explained in both written and oral testimony that one of the primary reasons JEA's risk-sharing mechanism should be rejected is that it unfairly penalizes PSE for the purchase price of CCA allowances.[16] These purchase prices are extremely volatile and are outside of PSE's control.[17] JEA admits that this "price risk" was not addressed in its proposal at all.[18] However, instead of correcting this problem, JEA simply asks the Commission to fix it: "JEA also recommends that the Commission adopt, at the end of this compliance period, an added component to the risk-sharing mechanism that has been developed to address Public Counsel's price risk concerns related to PSE's market performance."[19] The problem is, there is no fix because of the fundamental fact that PSE cannot control the purchase price of CCA allowances. Dr. Earle understands this and recommends that the Commission reject all of the proposed risk-sharing mechanisms.[20]

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[14] *See* JEA's Post-hearing Br. at ¶ 30. The portions of JEA's brief that propose a new modified risk-sharing proposal are the subject of a pending Motion to Strike by PSE. PSE incorporates herein the arguments set forth in its Motion to Strike. In the event the Commission does not strike JEA's modified proposal, it should reject it.
[15] *See* WAC 480-07-830(1). *See also,* RCW 34.05.570(3)(e).
[16] "Fourth, while I am sympathetic to JEA's goal of reducing emissions from the utility, there is an element of unfairness in penalizing the utility for the unit purchase price." Earle, Exh. RLE-1CT at 24:3-5. *See also,* Earle, TR. 154:6-156:17.
[17] *See* Br. of Public Counsel at ¶ 3 ("In Washington's own market, launched in 2023, prices doubled in six months, fell back toward the original price, and then dropped precipitously in 2024. Additionally, that volatility is not possible to accurately predict.").
[18] *See* JEA's Post-hearing Br. at ¶ 28.
[19] *See* JEA's Post-hearing Br. at ¶ 30.
[20] *See* Earle, Exh. RLE-1CT 26:20-27:2.

9. The shifting positions and proposals in this proceeding are partly a result of uncertainty that has only increased since this adjudication was initiated. Public Counsel argues that the volatility and uncertainty in the CCA auction price is reason alone to reject JEA's risk-sharing mechanism,[21] but the uncertainty is only increasing. The failed initiative to repeal the CCA, the anticipated linkage between Washington and California's allowance markets, and any adjustments to compliance periods that may occur related to such linkage are all pending factors that will no doubt impact CCA costs and risks.[22] These are all reasons not to establish a risk-sharing mechanism now. Further, if the recent Washington State election results have determined anything, it is that the use of natural gas is very much in the control of customers, not the Company, and the volatile nature of public policy and consumer choices around natural gas usage argue against adopting any risk-sharing mechanism at all.

B. A Risk-Sharing Mechanism is Unnecessary, Unwarranted, and Unworkable in the Context of the CCA

10. PSE acknowledges the Commission's broad authority to impose a risk-sharing mechanism in this proceeding, but most parties believe that establishing a risk-sharing mechanism now would be bad ratemaking policy. The Commission is not bound by its previous order in Docket UG-230470 to impose a risk-sharing mechanism in this proceeding, and Staff, Public Counsel, and PSE all agree that the Commission should decline to impose one now. The record in this proceeding demonstrates that a risk-sharing mechanism is unnecessary, unwarranted, and unworkable in the context of the CCA.

11. A risk-sharing mechanism is unnecessary because the CCA itself provides sufficient incentives and flexibility for PSE to comply with its emissions cap in the most cost-effective manner, without the need for additional regulatory intervention. A risk-sharing mechanism is unwarranted because PSE has the obligation to comply with the statute to help customers decarbonize or PSE will receive penalties. This legal liability and reputation risk alone is

[21] *See, e.g.,* Earle, Exh. RLE-1CT at 22:9-23:5.
[22] *See* Br. of Public Counsel at ¶ 3, citing McGuire, TR. 166:20–167:10.

sufficient to incent PSE to comply,[23] but a risk-sharing mechanism is further unwarranted because PSE's CCA compliance costs are already subject to prudence review and Commission oversight. A risk-sharing mechanism is unworkable because the CCA is a new and complex program that has not been given a chance to perform as intended, and imposing a risk-sharing mechanism at this stage would create more uncertainty, complexity, and costs for PSE and its customers.

III. CCA COST CONTROL AND RESPONSIBILITIES

A. Staff is Disingenuous in its Request that CCA Costs be Put Into Rates

12. Staff 's opening brief is mostly a proposition to overhaul regulatory policy in this adjudication (instead of a policy docket) to eliminate Schedule 111 altogether and shift CCA costs to base rates. Staff's request contradicts established regulatory policy and Staff's own recent support and approval of PSE's Schedule 111 tracker. But also, Staff's suggestion to eliminate the tracker is opposed by every party and should be rejected.

13. On the witness stand,[24] in cross-answering testimony,[25] and in its post-hearing brief,[26] Public Counsel identified the fundamental flaw in Staff's proposal to embed CCA costs in rates as its failure to address the critical issue of projecting CCA costs. As explained in more detail below, PSE cannot control the price or quantity of allowances it might need to purchase. Therefore, since cost equals price times quantity, and since quantity is unknown and uncontrollable, it is impossible to project CCA costs with any accuracy.[27] This inability to accurately project costs makes it impossible for the Commission to set a fair baseline rate. Public

[23] *See, In the Matter of the Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making, Interim Policy Statement Addressing Performance Measures and Goals, Targets, Performance Incentives, and Penalty Mechanisms,* Docket U-210590 at ¶ 19 (Apr. 12, 2024).
[24] *See* Earle, TR. 135:8-13.
[25] *See* Earle, Exh. RLE-1CT at 10:1-6.
[26] *See* Br. of Public Counsel at ¶ 21.
[27] *See* Earle, TR. 142:2-143:7.

Counsel even argues that putting CCA costs into base rates would violate Commission precedent.[28] PSE does not disagree.

14. In a revealing exchange between Staff and Public Counsel at the evidentiary hearing, Staff witness McGuire demonstrated how embedding CCA costs into rates would result in a "heads, I win, tails, you lose" scenario. Public Counsel presented the real-life example of how CCA costs fluctuate substantially from year to year. In 2023, CCA auction prices started at $48 and they rose to $63. Then in 2024, auction prices dropped to $25, less than half.[29] If the Company had forecasted its CCA costs for base rates in 2023 based on the $63 figure, then, when the price dropped to $25 (as actually happened), in Public Counsel's opinion, PSE would "over collect" for CCA costs from ratepayers.[30] Staff started to explain how that would be appropriate since it was a cost savings rather than "over collecting."[31] But then Staff quickly changed its position and assured Public Counsel and the Commission that customers would "get that money back" if any interested party filed a simple petition for deferred accounting.[32] "And if the Commission grants that petition the dollars that were overpaid by rate payers would be set aside in an account and then could be passed back to the ratepayers later on…"[33]

15. This enlightening real life example showed that Staff is disingenuous in its proposal and is not actually seeking to include costs of CCA allowances in base rates. Instead, it is seeking to establish an artificial ceiling on cost recovery without regard to the prudence of the costs incurred. If prices next year average $67 and PSE has an average cost of $65, then PSE should recover all those costs. Yet apparently Staff will argue that the base rates should include $30 allowances for 2025 based on 2024 average prices, thereby exposing PSE to the higher prices that would likely occur in 2025.

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[28] *See* Br. of Public Counsel at ¶ 21, *citing Wash. Utils. & Transp. Comm'n. v. Puget Sound Energy*, Dockets UE-090704 & UG-090705 (consol.) Final Order 11 at ¶ 26 (Apr. 2, 2010).
[29] *See* Robinson-O'Neil and McGuire, TR. 163:7-18.
[30] Robinson-O'Neil and McGuire, TR. 163:7-18
[31] McGuire, TR. 163:19-21.
[32] Robinson-O'Neil and McGuire, TR. 164:16-166:19.
[33] McGuire, TR. 166:13-17.

B. PSE has Limited, if any, Control or Responsibility Over CCA Costs

16. Staff's proposal to embed CCA costs in rates, as well as any risk-sharing mechanism that includes a manufactured incentive for PSE to control costs, should be rejected because it hinges on the faulty assumption that PSE can control CCA costs. As stated above, Public Counsel and PSE both agreed at the evidentiary hearing that CCA costs are a function of price and quantity. JEA's focus is on quantity,[34] but all other parties focus on price. Public Counsel and PSE also agree that quantity is almost exclusively a function of the number of customers (demand) and weather conditions (or temperature, as stated by Jason Kuzma). PSE has no control over the number of customers or the weather. Therefore, any risk-sharing mechanism that includes a factor to incentivize quantity, which PSE cannot control, should be rejected. It is important to note, as Public Counsel did, that PSE can to some extent manage risks by controlling its activities within the market, and it will continue to do that as part of its prudent management of costs.[35] But PSE cannot control the market, and a risk-sharing mechanism that includes an incentive to conserve should be rejected because it penalizes PSE for something it cannot control.

17. JEA continues to argue that PSE has significant control over CCA costs and should be incentivized to manage these costs effectively. Its argument is not support by the evidence and it ignores the very real legislative and regulatory restrictions PSE faces. PSE has limited control over CCA costs due to several factors, including:

1. **Market-Based Mechanism:** The CCA is designed as a market-based system where the price of compliance instruments is determined by market forces. PSE cannot control the market prices of these volatile instruments.[36] The costs of CCA compliance are a function of price and quantity, and quantity is almost exclusively a function of the number of customers and average daily temperature.[37] PSE has no control over either – PSE can

[34] This is understandable because JEA is concerned with faster decarbonization above all else, including cost-effectiveness.
[35] *See* Br. of Public Counsel, at ¶ 9, *citing* Kuzma, TR. 101:2-18.
[36] *See* Staff's Post-hearing Br. at ¶ 6, recognizing the uncertainty around the volatility of the CCA allowance market.
[37] *See* Earle, TR:135:10-20.

encourage but cannot force customers to decarbonize or use other heating sources and temperature is completely outside of PSE's control.

2. **Customer Behavior:** Customer behavior, such as energy usage and the decision to switch from natural gas to electric service, is outside the Company's control. PSE can offer incentives for customers to reduce greenhouse gas emissions, but ultimately, customers must make those changes. PSE is obligated to provide customers as much natural gas as they demand, when they demand it. The parties downplay this overarching obligation, but it overshadows anything PSE may do in attempt to control market costs.

3. **Regulatory and Legislative Constraints:** State laws and policies limit PSE's ability to transition to new fuels. As PSE has explained, RCW 80.28.385 imposes a cap on the volume of renewable natural gas that can be supplied to customers, which restricts PSE's ability to decarbonize its fuel supply.

18. JEA simply disagrees that PSE has no control over factors like customer behavior, the number of customers, and PSE's regulatory and legislative constraints. JEA concludes absolutely, but without evidence, that PSE has significant control over emissions reductions. That is simply not the case in the context of CCA compliance. Staff's proposal to embed CCA costs in rates and JEA's risk-sharing mechanism should be rejected for this fundamental misconception.

C. The Default Status Quo is Schedule 111 With No Risk-Sharing Mechanism

19. Staff recommends a final "default" decision if the Commission is not convinced that any of the risk-sharing proposals appropriately balance compliance risk between the Company and its natural gas customers.[38] PSE has no objection to saving the decision of a risk-sharing mechanism for another day, but PSE disagrees with Staff that the "default" decision means eliminating the tracker and embedding CCA costs in rates. That is in no way the "default" position, and that outcome is the one decision PSE, JEA, and Public Counsel agree on – CCA costs should not be recovered in base rates. Instead, PSE's Schedule 111 rates are currently in effect, subject to refund, pending a determination on the issue of a risk-sharing mechanism. If the Commission is not inclined to impose a risk-sharing mechanism now and instead defers to another proceeding

[38] *See* Staff's Post-hearing Br. at ¶ 9.

when there is less uncertainty around the volatility of the CCA allowance market, then the default position is continuation of Schedule 111 as the status quo.

IV. CONCLUSION

20. For the reasons set forth above, PSE respectfully requests the Commission decline to impose a risk-sharing mechanism on PSE's Schedule 111 tariff. The CCA already establishes appropriate risk-sharing between a natural gas utility and its customers – for the utility it is in the form of compliance obligations and potential penalties, and for customers it is in the form of pass-through price signals. Such is the intent of the CCA. Imposing a risk-sharing mechanism or putting CCA costs in base rates will increase complexity, uncertainty, and costs for both PSE and its customers.

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Respectfully submitted

PERKINS COIE LLP

By: 

Donna Barnett, WSBA No. 36794

Attorneys for Puget Sound Energy