Service Date: February 21, 2025

BEFORE THE WASHINGTON
UTLITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND ENERGY, Respondent.	DOCKET UE-230968 ORDER 05 FINAL ORDER REJECTING RISK SHARING MECHANISM

Synopsis: *The Commission finds it is within our authority to require a risk-sharing mechanism as part of Puget Sound Energy's (PSE) Climate Commitment Act (CCA) cost tracker, and that such a mechanism may be necessary to protect customers. Further, we decline to eliminate Puget Sound Energy's CCA tracker and include CCA costs in base rates at this time. Accordingly, PSE's CCA tracker should continue to be implemented to track CCA-related costs for recovery on an interim basis, subject to refund. Further, we find that the risk-sharing mechanism proposals put forth by the parties in this proceeding will not adequately share risks and incentivize a least-cost allowance purchasing strategy by PSE. Accordingly, we reject the proposed risk-sharing mechanisms put forth. However, because we find a risk-sharing mechanism may be necessary, we find the discussion should include all potentially impacted parties, including other gas and electric utilities, and that risk-sharing mechanisms should be considered in the Commission's CCA rulemaking docket.*

BACKGROUND

1 **PROCEDURAL HISTORY.** On November 22, 2023, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) proposed revisions to its rates under natural gas tariff Schedule WN U-2, Schedule 111, Greenhouse Gas Emissions Cap and Invest Adjustment.

2 In its filing, PSE sought to incorporate allowance costs and auction proceeds from the Climate Commitment Act (CCA), into Schedule 111 rates. Specifically, PSE sought to (1) add new language to the tariff that would enable the Company to fund decarbonization projects by setting aside $23.0 million of the Company's projected no cost allowance revenues, and (2) update rates pertaining to amounts deferred from January 2023 through September 2023.

3 The effect of the proposed revisions is a $45.3 million increase in annual revenues, or 4.62 percent. A typical residential customer using 64 therms per month would see an increase of $1.91 per month, or 2.43 percent. Additionally, known low-income customers would receive a credit that fully offsets the increase in the charge rate.

4 On December 19, 2023, PSE filed revised tariff sheets to amend its proposal to spread the withholding of proceeds for targeted electrification projects over three years of 2024 to 2026, setting aside $7.7 million in estimated proceeds for no cost allowances during the 2024 rate period. The revised tariff represents a revenue increase of $29.1 million, an average increase of 2.98 percent for all customers, with a typical residential customer experiencing an increase of $0.85 per month or 1.08 percent.

5 Commission staff (Staff) recommended the Commission suspend the matter for adjudication because PSE did not file a proposed risk-sharing mechanism as ordered by the Commission in Order 01 in Docket UG-230470.[1] At the Commission's December 21, 2023, Open Meeting, Staff recommended the matter be set for adjudication, but that the rates be allowed to go into effect on January 1, 2024, on an interim basis, subject to refund.[2] Staff's recommendation that the matter be adjudicated was generally supported through comments from the Northwest Energy Coalition (NWEC), Earth Justice, the Alliance of Western Energy Consumers (AWEC), and The Energy Project (TEP).[3]

6 On December 22, 2023, the Commission issued Order 01 suspending the tariff sheets filed by PSE on November 22, 2023, as revised on December 19, 2023, but allowed the proposed rates to become effective January 1, 2024, on an interim basis, subject to refund.[4]

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[1] *WUTC v. Puget Sound Energy*, Docket UG-230470, Order 01 ¶ 22 (Aug. 3, 2023).

[2] Order 01 at ¶ 8.

[3] Order 01 at ¶¶ 10-13.

[4] Order 01 at ¶¶ 16, 25.

7 On January 30, 2024, the Commission convened a prehearing conference before Administrative Law Judge Michael Howard. On February 12, 2024, the Commission issued Order 02, granting intervention to AWEC and Joint Environmental Advocates (JEA) – which is comprised of NWEC, Climate Solutions, and Washington Conservation Action – and set the matter for adjudication on October 9, 2024.

8 On May 8, 2024, Staff filed a Motion to Consolidate this Docket with Dockets UE-240004, UG-240005, and UE-230810.

9 On May 15, 2024, PSE and TEP filed Motions in Response which did not oppose consolidation, but asking that if this matter were consolidated, that JEA's participation be limited.[5] On this same date, JEA also filed a Response in Opposition to Staff's proposed Motion to Consolidate, arguing the dockets were not sufficiently related to warrant consolidation.[6]

10 On June 11, 2024, the Commission issued Order 08/06/04 in Dockets UE-240004, UG-240005, & UE-230810 (consolidated) as well as this Docket. The Commission denied consolidation, agreeing with JEA that this matter was sufficiently complex and novel as to warrant its own proceeding.[7]

11 On October 9, 2024, the Commission held an evidentiary hearing before the Commissioners who presided along with Administrative Law Judges James E. Brown II and Amy Bonfrisco.

12 On November 11, 2024, following the evidentiary hearing and submission of initial post-hearing briefs, PSE filed a Motion to Strike portions of JEA's post-hearing brief.

13 On November 22, 2024, JEA filed a Response in Opposition to PSE's Motion to Strike.

14 **PARTY REPRESENTATIVES.** Donna Barnett, of Perkins Coie, LLP, represents PSE. Nash Callaghan and Lisa Gafken, Assistant Attorneys Generals, Olympia, Washington, represents Staff.[8] Tad Robison O'Neill and Robert Sykes, Assistant Attorneys Generals,

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[5] Docket UE-240004, UG-240005, UE-230810 (*consolidated*) and Docket UE-230968, Order 08/06/04 at ¶ 7 (hereinafter Order 08/06/04).

[6] Order 08/06/04 at ¶¶ 8-9.

[7] Order 08/06/04 at ¶¶ 13-14.

[8] In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do

Seattle, Washington, represent the Public Counsel Unit of the Office of the Attorney General (Public Counsel). Tyler Pebble and Sommer Moser, of Davison Van Cleve, PC, represent AWEC. Noelia Gravotta and Jan Hasselman, of Earthjustice, Caitlin Krenn, of Washington Conservation Commission, Megan Larkin, of Climate Solutions, and Lauren McCloy, of NWEC, collectively represent the JEA.

15 **OUTSTANDING MATTERS.** As mentioned herein, on November 11, 2024, PSE filed a Motion to Strike (Motion) portions of JEA's initial post-hearing brief. JEA filed a Response in Opposition (Response) on November 22, 2024.

16 In its Motion, PSE argues the Commission should strike paragraphs 26-31 of JEA's post-hearing brief because JEA "concedes that its risk-sharing mechanism is flawed and inappropriately presents an entirely new mechanism for the Commission's one-sided consideration."[9]

17 PSE argues that JEA's proposal, as submitted in its post-hearing brief, prejudices PSE and other parties, as PSE and others have not had an opportunity to vet the proposal, conduct discovery, or present evidence rebutting the proposal.[10] Further, PSE argues that JEA's reliance on Public Counsel's critique of parties' proposals, when Public Counsel presented no response testimony and presented no alternative risk-sharing mechanism during the proceeding, should warrant striking JEA's proposal in briefing.[11]

18 In its Response, JEA argues PSE's assertions are unsupported by the record, and are procedurally inappropriate.[12] JEA argues "[p]arties are allowed to make recommendations and arguments that develop in light of the record" and that the Commission has declined to strike "suggested remedies and alternatives proffered by parties in briefs where there is sufficient evidence in the record to enable to Commission to reach [a decision on] the merits."[13]

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not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455

[9] PSE's Motion to Strike, at ¶ 6.

[10] PSE's Motion to Strike, at ¶¶ 7-11.

[11] PSE's Motion to Strike, at ¶ 12.

[12] JEA's Response in Opposition, at ¶ 11.

[13] JEA's Response in Opposition, at ¶ 12, *citing*, *In the Matter of the Pricing for Interconnection, Unbundled Element, Transport and Termination, and Resale*, Dockets UT-960369, UT-960370, & UT-960371, Order 23, ¶¶ 7-8 (Apr. 10, 2000).

19 JEA specifically argues that nothing it presented in its post-hearing brief is new, and that the modifications made by JEA are well supported by the record and reflect "JEA, Public Counsel, and Staff's good-faith participation and willingness to share insights through testimony, data requests, and cross-examination at hearing…"[14]

20 JEA argues its adjustment regarding sharing bands from normalized distribution to direct percentiles was explicitly shared during the evidentiary hearing and was modified based on Public Counsel's analysis in cross-answering testimony.[15] JEA further contends that its addition of a second sharing band in response to Public Counsel's critique was also raised at hearing,[16] and that it clarified its proposed treatment of units purchased above the price ceiling. Finally, JEA concludes that the one "added component" in its post-hearing brief is not new, but instead proposed by Public Counsel.[17]

21 Having reviewed the filings of PSE and JEA, and the record before us, we agree with JEA. The Commission will not strike post-hearing briefs where a party refines their position, presents alternatives, or otherwise incorporates suggestions from the record before us to suggest remedies and resolutions, so long as the party does not seek to intentionally prejudice other parties.[18] Accordingly, the Commission denies PSE's Motion to Strike.

22 **COMMISSION DETERMINATIONS.** The Commission finds it is within our authority to require a risk-sharing mechanism and that one may be necessary to protect customers. We decline to eliminate the CCA tracker and include CCA costs in base rates as recommended by Staff. Further, we find that the risk-sharing mechanism proposals put forth by the parties will not adequately share risks and incentivize a least-cost allowance purchasing strategy by PSE. Further, in determining a risk-sharing mechanism may be necessary, we find the discussion should include all potentially impacted parties, and that risk-sharing mechanisms should be considered in the Commission's CCA rulemaking docket.

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[14] JEA's Response in Opposition, at ¶ 16.

[15] JEA's Response in Opposition, at ¶ 17, *citing*, Gehrke, Tr. 170:14-23; Earle Exhs. RLE-4C, RLE-8X, & RLE-9X; Earle, Tr. 149:1-25.

[16] JEA's Response in Opposition, at ¶ 18, *citing*, Earle, Exh. RLE-1T at 23:6-24:2.

[17] JEA's Response in Opposition, at ¶¶ 19-20, *citing*, Gehrke, Tr. 170:24-171:7, 176:5-20; Danner, Tr. 175:22-176:4; Gehrke, Exh. WG-1T, p. 22; Earle, Exh. RLE-1T, 21:3-22:4, 22:9-12, 6:8-16.

[18] *See*, *In the M*

MEMORANDUM

I. STANDARD OF REVIEW

a. Regulating in the public interest and determining equitable, fair, just, reasonable, and sufficient rates

23 The Legislature has entrusted the Commission with broad discretion to determine rates for regulated industries. Pursuant to RCW 80.28.020, whenever the Commission finds after a hearing that the rates charged by a utility are "unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order."[19] As a general matter, the burden of proving that a proposed increase or that a change to rates is just and reasonable is upon the public service company.[20]

24 More recently, in 2019, the Legislature expanded the traditional definition of the public interest standard. As Washington state transitions to a clean energy economy, the public interest includes: "The equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks; and energy security and resiliency."[21] In achieving these policies, "there should not be an increase in environmental health impacts to highly impacted communities."[22]

25 Following the passage of RCW 80.28.425, the Commission indicated its commitment to considering equity while regulating in the public interest: "So that the Commission's decisions do not continue to contribute to ongoing systemic harms, we must apply an equity lens in all public interest considerations going forward."[23] The Commission also explained that regulated companies should be prepared to address equity considerations in future cases: "Recognizing that no action is equity-neutral, regulated companies should

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[19] *See also*, RCW 80.01.040(3) (providing that the Commission shall "[r]egulate in the public interest").

[20] RCW 80.04.130(1).

[21] RCW 19.405.010(6).

[22] RCW 19.405.010(6).

[23] *WUTC v. Cascade Natural Gas Corp.*, Docket UG-210755 Order 10 ¶ 58 (Aug. 23, 2022).

inquire whether each proposed modification to their rates, practices, or operations corrects or perpetuates inequities."[24]

26 As applicable here, the Commission will consider implementing risk-sharing mechanisms when the Commission determines it is necessary to allocate risk variability between shareholders and ratepayers where a utility has some ability to control costs.[25] Risk-sharing mechanisms should balance risks between customers and shareholders and provide an incentive to control costs and promote rate stability.[26]

II. MEMORANDUM

a. Contested Issues

27 Throughout this proceeding, PSE has maintained that "nothing in the CCA authorizes [or requires] a risk-sharing mechanism, or for natural gas local distribution company (LDC) utilities to reduce emissions for their customers."[27] In addition to the Company's concerns over statutory intent, PSE argues that introducing a risk-sharing mechanism, or RSM, would introduce uncertainty into an already uncertain compliance landscape.

28 PSE argues that current risks surrounding CCA compliance include: "(i) the shifting policy landscape with aspects of rulemaking still underway or future rulemaking expected, (ii) price and availability of future emissions reduction technologies, and (iii) linkage of Washington's Cap-and-Invest Program with similar market-based mechanisms in other jurisdictions."[28]

29 The Company also suggests that in addition to a risk-sharing mechanism altering the operation and intent of the CCA, adding a risk-sharing mechanism may interfere with the Commission's ability to utilize other regulatory tools.[29] PSE argues a risk-sharing

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[24] *WUTC v. Cascade Natural Gas Corp.*, Docket UG-210755 Order 10 ¶ 58 (Aug. 23, 2022).

[25] *WUTC v. Avista Corp.*, Docket UE-060181, Order 03, ¶ 23 (Jun. 16, 2006).

[26] *WUTC v. Puget Sound Energy Inc.*, Dockets UE-011570 & UG-011571 (*consolidated*), 12th Supp. Order, ¶¶ 23-24 (Jun. 20, 2002).

[27] Steuerwalt, Exh. MS-1T at 5:15-16; PSE Post-Hearing Brief, at ¶¶ 8 7, 21-29.

[28] PSE Post-Hearing Brief, at ¶ 25, *citing*, Steuerwalt, Exh. MS-1T at 15:4-11.

[29] PSE Post-Hearing Brief, at ¶ 28.

mechanism may impair the Commission's ability to review and approve prudently occurred costs in ensuring CCA costs are fair, just, reasonable, and sufficient.[30]

30 Despite PSE's objections to the adoption of a risk-sharing mechanism, the Company does propose that if one must be adopted, the Commission should approve the proposal put forth by Company witness Mickelson. However, PSE's proposal includes the following tenets:

> PSE structured the proposed CCA RSM bands around floors and ceilings for each band, calculated as follows:
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> **Deadband ("DB")**: Spans from Q3 to the lowest auction floor price during the applicable four-year compliance period, the DB encompasses costs and savings solely assigned to customers of PSE's natural gas LDC operations. For instance, in calendar year 2023, the DB floor would have been the auction floor price of $22.20 per MTCO2e, and the DB ceiling would be $65.25 per MTCO2e. If the [auction floor and ceiling price] is more than the DB, then PSE could share in some of the costs incurred with CCA compliance.[31]
>
> **Band A1**: For Band A1, PSE could share in ten percent of costs incurred between the Band A1 floor (one penny above the DB) and the Band A1 ceiling (the 97.5th percentile), with customers responsible for the remainder of the costs.[32]
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> **Band A2**: For Band A2, PSE could share in twenty percent of costs incurred between the Band A2 floor (one penny above the 97.5th percentile) and the Band A2 ceiling (the highest auction ceiling price during the applicable four-year compliance period),[33] and ten percent of costs incurred between the Band A1 floor (one penny above the DB) and the Band A1 ceiling (the 97.5th percentile).[34]

31 Customers of PSE's natural gas LDC operations would be responsible for the remainder of the costs.[35] Further, PSE witness Mickelson testifies in favor of "the inclusion of a

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[30] PSE Post-Hearing Brief, at ¶ 29.

[31] Mickelson, Exh. CTM-1CT at 14:5-12.

[32] Mickelson, Exh. CTM-1CT at 14:13-16.

[33] Mickelson, Exh. CTM-1CT at 14:20-24.

[34] Mickelson, Exh. CTM-1CT at 14:25-27.

[35] Mickelson, Exh. CTM-1CT at 15:1-2.

financial earnings test [to consider] PSE's financial stability and its capacity to cover its share of compliance costs for the CCA during the applicable four-year compliance period."[36] Mickelson explains that with such a test, "the risk-sharing bands, which determine the allocation of compliance costs between PSE and its customers, would be influenced by the financial performance of PSE within a specified period, and assessed through a financial earnings test."[37]

32 Mickelson recommends using an earnings test as has been used in past regulatory mechanisms, such as multiyear rate plans, because these earnings tests are familiar to the Commission and have already undergone regulatory oversight.[38] However, Mickelson notes that under his proposal for CCA cost sharing, "the sharing only applies to the first 50 basis points above the authorized return established within a general rate case since any earnings exceeding the 50 basis point threshold is already deferred for future determination by the Commission in a subsequent adjudicative proceeding and is therefore not available to be applied to the CCA RSM."[39]

33 Mickelson explains further that "the amount of CCA compliance costs that PSE would share if the results of the financial earnings test were to indicate that PSE had over-earned would be dependent on two variables—the amount of over-earning indicated by the financial earnings test and the amount of shared compliance costs indicated by the proposed CCA RSM sharing bands:

1. If the amount of over-earning were *greater than* the amount of shared compliance costs, then PSE would pay (with one caveat addressed below) the full amount of shared CCA compliance costs.

2. If the amount of over-earning were *less than* the amount of shared compliance costs, then PSE would share in CCA compliance up to the amount of over-earning indicated by the financial earnings test.[40]

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[36] Mickelson, Exh. CTM-1CT at 18:5-7.

[37] Mickelson, Exh. CTM-1CT at 18:7-10.

[38] Mickelson, Exh. CTM-1CT at 18:20-21, 19:1.

[39] Mickelson, Exh. CTM-1CT at 19:1-6.

[40] Mickelson, Exh. CTM-1CT at 20:6-20.

34 Mickelson clarifies that the caveat mentioned earlier addresses complications arising from requirements of RCW 80.28.425(6),[41] which in pertinent part requires PSE to "defer for later determination by the Commission, any over-earnings of PSE's natural gas LDC operations that are 50 basis points higher than the authorized rate of return reported in its Commission Basis Report."[42] Accordingly, PSE argues that its application of an earnings test would result in a cap on PSE's potential sharing of CCA compliance costs "at an amount no greater than the difference between: (1) the maximum earnings allowed before deferral occurs under RCW 80.28.425(6)[43] and (2) the earnings that would have resulted if there were neither under- nor over-earning."[44]

35 In addition to capping the amount of shared expenses PSE might incur if it over-earned, PSE also proposes that the Company would not share in any costs if its 12-month earnings fell below its authorized rate of return.[45]

36 Staff, Public Counsel, and JEA, all take issue with PSE's proposal, particularly with the earnings test. Staff proposes an alternative earnings test, while JEA proposes an alternative risk-sharing mechanism, which are discussed below.

37 Staff recommends first that the Commission order PSE to eliminate Schedule 111 in its next general rate case and to track CCA compliance costs in the Company's base rate revenue requirement.[46] In support of Staff's recommendation, witness McGuire argues that the continuation of Schedule 111 is not justified without an assessment of the earnings risks PSE actually faces from CCA compliance, and that continuation of the tracker shifts risks from the Company to customers, disincentivizes Company cost controls, and adds administrative burden to the Commission.[47]

38 PSE argues Staff's proposal to incorporate CCA costs in base rates is "disingenuous."[48] PSE notes that no other party supports eliminating the tracker and asserts Staff is trying

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[41] Mickelson, Exh. CTM-1CT at 21:5-6.

[42] Mickelson, Exh. CTM-1CT at 21:18-20.

[43] Mickelson, Exh. CTM-1CT at 21:25-26.

[44] Mickelson, Exh. CTM-1CT at 21:26, 22:1.

[45] Mickelson, Exh. CTM-1CT at 19:12-21:2.

[46] McGuire, Exh. CRM-1T at 3:7-10; Staff's Post-Hearing Brief, at ¶ 3.

[47] McGuire, Exh. CRM-1T at 3:20-21, 4:1-6.

[48] PSE's Reply Brief, at ¶ 15.

to establish an "artificial ceiling" on CCA costs, while disregarding whether those costs are prudently incurred.[49]

39 Public Counsel argues that the Commission should maintain the CCA tracker, with a proper risk-sharing mechanism to reduce risks for both the Company and ratepayers by: (1) eliminating any incentive that might exist to over-estimate CCA allowance costs to manipulate the estimates between general rate cases; and (2) providing a way to pass costs to customers that are known and measurable instead of allowing for the inclusion of CCA costs in base rates, which would necessitate forecasting costs.[50]

40 JEA argues that if the Commission agrees to eliminate Schedule 111 and include CCA costs in base rates, the Commission should still include a risk-sharing mechanism to protect customers.[51] JEA generally argues against incorporating these costs into base rates, reasoning that adopting Staff's preferred recommendation would likely result in disagreements over forecasting, making general rate cases even more contentious.[52]

41 If the Commission declines to eliminate the Schedule 111 tracker, Staff argues foremost that the Commission has authority to require a risk-sharing mechanism and points out that PSE witness Steuerwalt admitted this point at the evidentiary hearing.[53]

42 Further, Staff argues that if the Commission does not eliminate the tracker, the Commission should choose among the risk-sharing mechanisms proposed, because without a risk-sharing mechanism, CCA costs will be shifted unfairly to ratepayers.[54] Staff suggests that the Commission should choose between the proposal presented by PSE, as modified by Staff, or the proposal put forward by JEA.[55]

43 For Staff's modifications to PSE's proposal, witness McConnell recommends adopting a "sharing cap proposal" whereby PSE's financial exposure would be limited to 10 basis points of its return on equity for each year during the compliance period, which currently

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[49] PSE's Reply Brief, at ¶ 15.

[50] Earle, Exh. RLE-1CT at 8:6-10, 10:2-11, 11:19-21

[51] Gehrke, Exh. WG-4T at 5:7-11. JEA recommends a risk-sharing mechanism of 30 percent cost sharing for estimated unit costs set at the price ceiling. *Id*.

[52] Gehrke, Exh. WG-4T at 5:13-18, 6:5-7.

[53] Staff's Post-Hearing Brief, at ¶ 5, *citing*, Steuerwalt, Tr. Vol. II at 76:1-2

[54] Staff's Post-Hearing Brief, at ¶¶ 6-8; McGuire, Exh. CTM-1T at 4:16-18.

[55] Staff's Post-Hearing Brief, at ¶¶ 6-8.

extends over four years.[56] McConnell notes that an adjustment to the earnings test is needed because "PSE's proposed earnings test is incompatible with equitable risk-sharing."[57] McConnell further explains that the PSE earnings test obviates any meaningful risk to the Company and fails to examine the nexus of CCA compliance cost variability to earnings.[58] However, Staff does not propose any changes to PSE's dead bands.

44 In response, PSE witness Mickelson argues that Staff's modified earnings test is too stringent, could result in higher compliance costs on the Company, and that Staff's earnings cap is unclear as to how it would operate or what would occur if the costs exceeded the cap.[59] Mickelson also highlights that Staff's proposed cap of 10 basis points annually is arbitrary.[60]

45 While Public Counsel argues that Staff's proposed earnings cap does not adequately share risk and fails to provide incentives for PSE to manage costs on matters within Company control,[61] JEA maintains that rather than capping risk as Staff proposes, the Commission should adopt JEA's earnings test. As discussed later in this Order, JEA encourages adoption of its proposal to ensure PSE does not experience substantial earnings shortfalls below its authorized return.[62]

46 Regarding what an appropriate sharing mechanism might look like, Public Counsel recommends the Commission require Staff and PSE to refine their proposals for a risk-sharing mechanism to include a performance-based metric that would benchmark PSE's performance against that of a random trader in the market.[63] Public Counsel witness Earle asserts that, under such a mechanism, market performance would be judged against the percentile distribution of average prices in the market, which could be averaged across

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[56] McConnell, Exh. KM-1T at 9:12-10:16.

[57] McConnell, Exh. KM-1T at 6:18.

[58] McConnell, Exh. KM-1T at 6:18-7:3, 8:1-2.

[59] Mickelson, Exh. CTM-4T at 3:19-21, 4:5-10.

[60] Mickelson, Exh. CTM-4T at 4:17-19.

[61] Earle, Exh. RLE-1CT at 2:5-8, 19:7-15.

[62] Gehrke, Exh. WG-4T at 7:17-8:2.

[63] Earle, Exh. RLE-1CT at 25:10-12, 25:22-23.

the entire compliance period, and would address those elements within PSE's control, including purchase price, timing, and strategy.[64]

47 PSE generally agrees with Public Counsel that the Commission should not impose a risk-sharing mechanism at this time, and continues to maintain requiring one is inappropriate.[65] Staff does not oppose Public Counsel's recommendation, but prefers the Commission select a risk-sharing mechanism from those proposed.[66] JEA does not specifically provide comments on Public Counsel's recommendation to refine proposals, but takes Public Counsel's critiques into account in refining its proposal in briefing.[67]

48 JEA, initially proposed a model "based on price ceiling units and a modified earnings test and [had] the Company bear 30% of costs associated with costs nearing the price ceiling."[68]

49 JEA witness Gehrke states that "JEA's risk-sharing mechanism involves a comparison of compliance instrument unit costs to specific sharing bands, namely the 'deadband' and 'band alpha.'"[69] The "deadband" encompasses unit costs ranging from the auction floor price to one cent below the 97.5 percentile, with customers bearing 100% of the unit costs.[70] "The 'band alpha' encompasses unit costs from the 97.5 percentile to the ceiling price in the compliance period, with customers bearing 70% of the unit costs and the Company bearing 30%."[71]

50 Gehrke elaborates that "once compliance costs are allocated to each year of the compliance period, the earnings test will be established at 50 basis points lower than PSE's natural gas operations' authorized return on equity."[72] Furthermore, Gehrke states that "if the compliance period's duration changes under CCA rules, the language in the

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[64] *See*, Earle, Exh. RLE-1CT at 25:15-26:12.

[65] *See*, PSE's Post-Hearing Brief, at ¶ 24.

[66] Staff's Post-Hearing Brief, at ¶ 7.

[67] *See, e.g.*, JEA's Post-Hearing Brief, at ¶ 30.

[68] Gehrke, Exh. WG-1T at 21:16-18.

[69] Gehrke, Exh. WG-1T at 21:20-21.

[70] Gehrke, Exh. WG-1T at 21:22-23, 22:1.

[71] Gehrke, Exh. WG-1T at 22:1-3.

[72] Gehrke, Exh. WG-1T at 22:4-7.

rate schedule should be flexible to accommodate such changes while maintaining the risk-sharing mechanism."[73] JEA's initial proposal is shown in Table 1.

Table 1: Graphic Representation of JEA Proposal[74]

Compliance Period Max Ceiling Price

Band Alpha PSE 30% / Customer 70%	**97.5th Percentile**
Deadband No Sharing	

Compliance Period Minimum Market Floor Price

63 Gehrke notes that "JEA's sharing bands are based on the Company's statistical analysis framework," and that "JEA proposes to use the daily prices per metric ton of carbon dioxide in the secondary market over the four years of the compliance period as inputs into the sharing bands calculation."[75]

64 In its post-hearing brief, JEA amends its proposal in response to critiques from Public Counsel with the following modifications:

1. Sharing band thresholds will be determined using the direct calculation of percentiles of market prices rather than assuming a normal distribution;
2. An additional sharing band, dubbed 'band beta,' will be created between the 90th percentile and 97.5th percentile to create a more continuous penalty structure in which PSE will share 10% of unit costs in band beta; and

[73] Gehrke, Exh. WG-1T at 22:7-10.

[74] Gehrke, Exh. WG-1T at 22.

[75] Gehrke, Exh. WG-1T at 23:2-5.

3. A clarification that any allowance units purchased that exceed the price ceiling will be reviewed in the following manner: the difference between the actual price and the price ceiling will be deemed imprudent and borne by the Company, and the remaining unit price will be treated as a price ceiling unit pursuant to JEA's mechanism.[76]

65 JEA argues in relation to both its proposals that they incentivize emissions reductions, which PSE's proposal does not.[77] JEA witness McCloy maintains that while the CCA does not mandate that customers be solely responsible for the costs of obtaining allowances, it does require the utility's compliance.[78] Additionally, JEA argues that contrary to PSE's assertions otherwise, many customers lack the ability to independently transition away from natural gas usage and many lack the choice as to whether to connect to the gas system.[79] To further support this contention, witness Gehrke explains that PSE is in fact the best equipped to decarbonize their system, has the financial ability, expertise, and planning capability to reduce the number of allowances purchased and in turn the costs associated with those purchases.[80]

66 PSE's witness Steuerwalt testifies that in JEA's initial proposal, it mischaracterizes and misunderstands CCA compliance, and that the CCA does not require or suggest individual entities achieve a proportionate share of state greenhouse gas emissions reduction targets.[81] Steuerwalt argues that if the legislature intended individual covered entities to reduce emissions as suggested by JEA, they would have included emissions reduction targets.[82] PSE also criticizes JEA's proposal as shifting too much risk to the Company and potentially forcing PSE to invest in low emissions alternatives that may be more costly than compliance instruments.[83] As discussed above, PSE opposes the Commission considering JEA's amended proposal.

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[76] JEA's Post-Hearing Brief, at ¶ 30, *citing*, RLE-8X (describing distribution of prices use percentiles of secondary market data rather than normalized distribution); Gehrke, Tr. Vol. III at 176:5-20.

[77] *See*, Gehrke, Exh. WG-1T at 16:21-23.

[78] McCloy, Exh. LM-1T at 8:5-9.

[79] Gehrke, Exh. WG-1T at 18:8-12.

[80] *See*, Gehrke, Exh. WG-1T at 20:13-21.

[81] Steuerwalt, Exh. MS-3T at 6:4-11.

[82] Steuerwalt, Exh. MS-3T at 12:2-4.

[83] *See*, Steuerwalt, Exh. MS-3T at 19:6-13.

67 Staff does not oppose adoption of JEA's proposal,[84] and Public Counsel argues that the Commission should give JEA's amended proposal serious consideration to determine if it could be adopted with further modifications to account for incentivizing a cost-effective allowance purchasing strategy.[85] While AWEC did not file testimony or an initial brief, AWEC did file a reply brief encouraging the decision to grant PSE's Motion to Strike JEA's amended proposal, as discussed above, and generally favors not implementing a risk-sharing mechanism at this time.[86]

b. Commission Determination

68 We agree generally with Public Counsel's recommendation as contained in its initial post-hearing brief.[87] In doing so, we decline to eliminate the CCA tracker and include CCA costs in base rates as Staff recommended. While we find that the proposals put forth by the parties are inadequate to establish a risk sharing mechanism for PSE's CCA costs, we find it is within our authority to require a risk-sharing mechanism and that one may be necessary to protect customers. Further, given that a risk-sharing mechanism may be necessary, and that other similarly situated companies would be subject to such a determination, we find the discussion should include all potentially impacted parties, and that risk-sharing mechanisms should be considered for discussion in the Commission's CCA rulemaking docket. We address the issue of our authority to implement a risk-sharing mechanism first.

69 PSE asserts that "there is no legislative or policy intention or direction" to implement a CCA risk-sharing mechanism, and that nothing in the CCA "requires or authorizes the Commission" to do so.[88] While the CCA does not explicitly mention risk-sharing mechanisms, we find that the Commission does have the authority to require a risk-sharing mechanism.

70 The Commission is obligated to regulate utilities in the public interest and to ensure that all rates charged are fair, just, reasonable, and sufficient, and that these rates are consistent with the law.[89] Nothing in the CCA changes, amends, or otherwise alters the

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[84] Staff's Post-Hearing Brief, at ¶ 7.

[85] Public Counsel's Reply Brief, at ¶¶ 14-15.

[86] *See generally*, AWEC's Reply Brief.

[87] *See*, Public Counsel's Post-Hearing Brief, at ¶ 14.

[88] PSE's Post-Hearing Brief, at ¶ 20.

[89] RCW 80.28.010(1) and RCW 80.28.020.

Commission's statutory duties. When considering the public interest, the Commission may factor in and weigh "environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity…"[90]

71 Among the CCA's stated intent is for the law to serve as a tool in addition to those laws and policies already in place to meet the state's greenhouse gas emissions limits, i.e., to reduce greenhouse gas emissions.[91]

72 Importantly, the CCA regulates "covered entities," including PSE, but not individual customers.[92] Accordingly, PSE's contention that a public utility's duty under the CCA is merely to submit compliance instruments and "communicate to customers how they should decarbonize" is untenable.[93] However, PSE is correct that the CCA does not require decarbonization at any cost, and that utilities must weigh whether decarbonization or purchase of compliance instruments is the prudent path and lowest cost for customers.[94] This is exactly the point and where the Commission draws its authority to implement a risk-sharing mechanism.

73 As Public Counsel and JEA argue in brief, PSE is situated in the driver's seat. Not only does PSE have the financial and planning ability, but PSE also has expertise and control over their energy delivery systems. PSE is ultimately the entity that will decide whether to comply with the CCA through the purchase of compliance instruments or some other combination of efforts. In making these decisions, customers will incur costs. Those costs must be fair, just, reasonable, and sufficient, and the Commission must ensure that only costs prudently incurred will be passed on to customers.[95]

74 While PSE acknowledges this, the Company argues pursuant to Commission policy that a risk-sharing mechanism is not appropriate because CCA costs are outside the Company's control, the Company has a duty to serve customers, and that customer demand will dictate emissions.[96] Again, we disagree.

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[90] RCW 80.28.425(1).

[91] RCW 70A.65.005(2).

[92] *See*, RCW 70A.65.010(23), .120, and .130; *see also*, Kuzma, Exh. JK-1T at 27-28.

[93] PSE's Post-Hearing Brief, at ¶¶ 21-23.

[94] PSE's Post-Hearing Brief, at ¶ 21.

[95] RCW 80.28.010, .020.

[96] *See*, PSE's Post-Hearing Brief, at ¶¶ 22, 30.

75 While Commission's policy generally is to implement risk-sharing mechanisms to address factors within a utility's control, our authority to implement such mechanisms is not limited to such factors and will not hinder the Commission's ability to advance the public interest, including equity and energy justice.[97] First, as Public Counsel points out, Commission decisions on risk-sharing mechanisms do not turn on a utility's "total control" over an expense, and "PSE has significant input on the planning and programming in support of decarbonization."[98] This control over decarbonization ultimately impacts the number of allowances purchased. Furthermore, PSE is in control of its buying and selling strategies, which we view as similar to hedging, in which PSE ultimately decides how and when to comply to purchase lowest cost allowances to meet their obligation as a covered entity. In this way, PSE exercises control just as they do in procuring power where they may be a price taker on the market, but they also control their generation, which impacts how much power the Company needs to purchase on the market. The Commission regularly employs risk-sharing mechanisms in relation to power costs and we believe it is appropriate and well within our authority to do so for CCA compliance costs as well.

76 On the issue of eliminating the CCA tracker and including those costs in base rates, we do not agree with Staff and find the CCA tracker is still necessary. As Public Counsel and PSE assert, there is currently no basis for accurately projecting CCA costs and including CCA costs in base rates will likely result in contentious and drawn out forecasting disputes, as any forecast is likely to result in significant over- or under- collection.[99] Accordingly, we find it appropriate to maintain Schedule 111 and the CCA tracker at this time, which will allow us to track actual costs leading up to the conclusion of the four year compliance period. This approach is consistent with our recent orders in the Avista and PSE general rate cases in relation to CCA costs, where we declined to include those costs in the power cost adjustment mechanisms for each company. For a more detailed discussion on the issue, parties may refer to those Orders.[100]

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[97] *In re the Proceeding to Develop a Policy Statement*, Interim Policy Statement Addressing Performance Measures and Goals, Targets, Performance Incentives, and Penalty Mechanisms, Docket U-210590 at ¶ 22 (Apr. 12, 2024).

[98] Public Counsel's Reply Brief, at ¶ 6.

[99] Public Counsel's Post-Hearing Brief, at ¶ 21; *see also*, PSE's Reply Brief, at ¶ 13.

[100] *See*, *WUTC v. Puget Sound Energy*, Dockets UE-240004 & UG-240005, Order 09/07 ¶¶ 126-148 (Jan. 15, 2025); *see also*, *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-240006 & UG-240007, Order 08 ¶¶ 20-86 (Dec. 20, 2024) (corrected Order 08, Dec. 23, 2024).

77 Finally, on the issue of the risk-sharing mechanisms proposed by the parties, we find that no one method proposed by the parties is appropriate to adopt at this time. We continue to find that risk sharing mechanisms may be necessary to ensure appropriate incentives for PSE and other utilities to pursue least cost compliance strategies, but believe the issues should be considered in the broader CCA docket where all affected utilities and other interested parties can participate.

78 We agree with Public Counsel that a risk sharing mechanism for CCA compliance costs should address market performance, and require PSE and other parties to resubmit proposals fashioned as market performance-based mechanisms that create actual incentives and would expose PSE to a portion of the risks associated with CCA costs.[101]

79 We reject PSE's proposed risk-sharing mechanism for the reasons put forth by Staff, Public Counsel, and JEA, specifically that the earnings test contained in PSE's proposal would "effectively cancel" any incentives for PSE to manage costs.[102] We also agree with witness McConnell that the earnings test proposed by the Company is "incompatible with equitable risk-sharing" and fails to expose PSE to any meaningful risk.[103] Public Counsel echoes these concerns and argues PSE's proposal would result in no sharing of risk,[104] accurately explains that the earnings test is not the only flaw in PSE's proposal, but that the Company's proposal also lacks an incentive to perform well as compared to the market.[105] For these reasons, we agree with Staff, Public Counsel, and JEA, and find that PSE's proposed risk-sharing mechanism does not meet the requirements of fair and equitable rates, and therefore should be rejected.[106]

80 Similarly, we reject Staff's and JEA's proposed risk-sharing mechanisms. Although Staff's proposal recognizes the serious flaws of PSE's proposed earnings test, there is sufficient support in the record to limit PSE's risk to 10 basis points. Further, because Staff's proposal is otherwise identical to PSE's and as expressed above, we share some of Public Counsel's concerns in how PSE formulated its dead bands. That is, we are not convinced that there is enough support in the record to determine whether the dead bands should be correlated to the price ceiling, as Staff and PSE suggest, or if the dead bands

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[101] Public Counsel's Post-Hearing Brief, at ¶ 17.

[102] Staff's Post-Hearing Brief, at ¶ 6.

[103] McConnell, Exh. KM-1T at 6:17-7:12.

[104] Public Counsel's Post-Hearing Brief, at ¶ 8.

[105] *See*, Earle, Exh. RLE-1T at 25:22-26:16.

[106] *See*, JEA's Post-Hearing Brief, at ¶ 23.

should instead be correlated to market performance as Public Counsel suggests. Accordingly, we reject Staff's proposed risk-sharing mechanism.

81 While JEA's modified approach is at least somewhat supported by Staff and Public Counsel, and addresses some of Public Counsel's concerns, the record here is not fully developed on the implications of adopting JEA's proposal.[107] We agree with Public Counsel that JEA's modified proposal still raises questions, namely whether the modified proposal adequately incentivizes a cost-effective – or lowest cost – allowance purchasing strategy and accordingly we reject JEA's initial and modified proposals.[108]

82 At its heart, a risk-sharing mechanism should incentivize PSE to formulate and employ a lowest cost allowance purchasing strategy, and expose PSE and its customers to some level of risk, to ensure the incentive exists and is tangible. Without a risk-sharing mechanism proposed in the record that meets these criteria, we cannot approve any of the proposals put forth by the parties. Further, we find that a risk-sharing mechanism may be necessary for all utility CCA trackers, and accordingly should involve a broader range of interested parties. For these reasons, we find it appropriate to consider risk-sharing mechanisms as part of our broader CCA rulemaking proceeding in Docket U-230161.

FINDINGS OF FACT

83 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

84 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including natural gas companies.

85 (2) PSE is a "natural gas company" and a "public service company" as those terms are defined in RCW 80.04.010 and used in Title 80 RCW, and is subject to Commission jurisdiction.

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[107] *See*, Staff's Post-Hearing Brief, at ¶ 7; *see also*, Public Counsel's Reply Brief, at ¶ 16.

[108] Public Counsel's Reply Brief, at ¶ 14.

86 (3) On December 19, 2023, PSE filed revised tariff sheets to amend Schedule 111. The Commission suspended the filing in Order 01 of this Docket on December 22, 2023, allowing the proposed rates to become effective January 1, 2024, on an interim basis, subject to refund, after finding PSE had failed to file a proposed risk-sharing mechanism.

87 (4) On April 25, 2024, PSE filed a proposed risk-sharing mechanism in this Docket.

88 (5) The Commission held an evidentiary hearing in this Docket on October 9, 2024, with the Commissioners presiding, along with Administrative Law Judges Amy Bonfrisco, James Brown II, and Connor A. Thompson.

89 (6) PSE's proposed risk-sharing mechanism fails to balance risks between shareholders and customers, and the earnings test proposed would effectively insulate PSE from sharing in any meaningful risk.

90 (7) Staff's proposed risk-sharing mechanism, which in large part relies on PSE's proposal, lacks support in the record and does not address whether dead bands should be based on market performance.

91 (8) JEA's modified proposed risk-sharing mechanism lacks support in the record, has not been fully vetted by the parties, and may not incentivize a least-cost allowance purchase strategy.

92 (9) The discussion surrounding an appropriate risk-sharing mechanism should include all interested parties and should be discussed as part of the Commission's CCA rulemaking docket.

CONCLUSIONS OF LAW

93 Having discussed above all matters material to this decision, and having stated the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

94 (1) The Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

95 (2) Puget Sound Energy is a natural gas company and a public service company subject to Commission jurisdiction.

96 (3) In any proceeding proposing to change a tariff schedule, the effect of which would be to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable will be upon the public service company. RCW 80.04.130(4). The Commission's determination of whether the Company has carried its burden is judged based on the full evidentiary record.

97 (4) The Commission has authority to require a risk-sharing mechanism pursuant to its rate making authority under RCW 80.28.010(1) and RCW 80.28.020.

98 (5) Pursuant to the Commission's authority to require a risk-sharing mechanism, a risk-sharing mechanism may be necessary for the purchase of CCA allowances, the costs of which are variable, and the purchasing strategy, planning, and compliance are reasonably within PSE's control.

99 (6) Staff's proposal to eliminate Schedule 111 and include CCA costs in base rates is premature, as a full compliance period has not yet passed, costs have been variable, and there currently exists no reasonable forecasting methodology.

100 (7) The risk-sharing mechanisms put forward by PSE, Staff, and JEA fail to adequately balance risks between customers and shareholders, or incentivize PSE to implement a least-cost allowance purchasing strategy, and should be rejected.

101 (8) Because the Commission finds a risk-sharing mechanism may be necessary for all utility CCA trackers, the Commission should further consider an appropriate risk-sharing mechanism as part of the Commission's CCA rulemaking proceeding in Docket U-230161, so that all interested parties can partake in formulating an appropriate mechanism.

102 (9) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS:

103 (1) Puget Sound Energy shall maintain and continue Schedule 111 to track and allocate Climate Commitment Act costs pursuant to this Order.

104 (2) The risk-sharing mechanisms proposed by Puget Sound Energy, Commission staff, and Joint Environmental Advocates are rejected for failing to adequately balance risks between ratepayers and shareholders.

105 (3) The Commission retains jurisdiction over the subject matter and Puget Sound Energy to effectuate the provisions of this Order, and shall further consider the need for, and provisions of, a risk-sharing mechanism in Docket U-230161.

Dated at Lacey, Washington, and effective February 21, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL,
Commissioner

MILTON H. DOUMIT,
Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.