

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

Docket UG-230470

COMPLIANCE FILING OF PUGET
SOUND ENERGY

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	BACKGROUND	3
III.	SUMMARY OF CLIMATE COMMITMENT ACT	8
IV.	CONCERNS	9
A.	PSE Already Bears the Risk Under State Law.....	9
B.	Risk-Sharing Mechanism Diminishes Price Signals.....	9
C.	PSE Has a Statutory Duty to Serve Natural Gas to its Customers.....	10
D.	Statutory Caps on Renewable Fuels.....	11
E.	It is Premature to Develop an Appropriate Risk-Sharing Mechanism.....	11
F.	Risks Must Be Within PSE’s Control.....	12
V.	PSE ENGAGEMENT ON TOPIC.....	13
VI.	RISK-SHARING MECHANISM PROPOSAL	14
VII.	CONCLUSION AND RECOMMENDATION.....	16

I. INTRODUCTION

- 1 Puget Sound Energy (“PSE” or “the Company”) respectfully submits this compliance filing to the Washington Utilities and Transportation Commission (“Commission”) pursuant to Order 01 (issued on August 3, 2023) in this proceeding, which requires PSE to work with interested parties in the Commission-led Workshop Series on the Climate Commitment Act (“CCA”), Docket U-230161, and with the Low-Income Advisory Committee (“LIAC”) to propose a risk-sharing mechanism in PSE’s October filing.¹
- 2 Pursuant to Order 01, PSE reached out to interested parties who submitted comments to this docket on risk-sharing to discuss the topic, to the LIAC, and to natural gas utilities. However, there was no consensus among interested parties as to the meaning of “risks to be shared”, let alone about a potential reasonable risk-sharing mechanism proposal. Further, since Order 01, only one workshop with the Commission in Docket U-230161 took place – on September 15, 2023 – which included minimal discussion on risk-sharing. The next workshop is scheduled for November 8, 2023, and includes the topic of CCA risk-sharing on the discussion agenda again.
- 3 As discussed below, PSE has significant concerns regarding the necessity of a CCA risk-sharing mechanism, given that the Cap and Invest program is a market-based mechanism and the Cap and Invest program has embedded non-compliance penalties.
- 4 Further, as PSE stated in its Comments in Docket U-230161 on September 7, 2023, at this early stage of CCA implementation, it is premature to design an equitable, fair and reasonable risk-sharing mechanism, if any at all.

¹ Order 01, Allowing Tariff Revisions to Become Effective Subject to Conditions, at ¶ 22 (Aug. 3, 2023).

- 5 PSE respectfully requests the Commission to issue an order approving this compliance filing and allowing PSE and Interested Parties to continue discussions in Docket U-230161 workshops on the topic of a potential risk-sharing mechanism proposal, whether such a mechanism is feasible, and how it could be designed consistent with existing statutes.² There has been insufficient time to consider how and whether a risk-sharing mechanism could work, in light of the statutory obligations that PSE must follow, as discussed in more detail below. In this compliance filing PSE proposes a path forward to continue to work with interested parties toward the development of a decarbonization plan and a risk-sharing mechanism.
- 6 All correspondence related to this Compliance Filing should be directed as follows:

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II. BACKGROUND

- 7 In 2021, the Washington State Legislature passed Senate Bill 5126, also known as the CCA, codified as RCW 70A.65, to reduce greenhouse gas (“GHG”) emissions. Also referred to as “Cap and Invest,” the law establishes a declining cap on GHG emissions from covered entities

² The next workshop is currently scheduled for November 8, 2023, and it already includes risk-sharing as a topic of discussion. Therefore, it does not make sense to propose or impose a risk-sharing mechanism before this discussion.

and is intended to reduce emissions in the state by 95 percent by 2050. As PSE is a covered entity, as defined in RCW 70A.65.080, PSE must participate in the compliance program.

- 8 The Cap and Invest Program final rules were adopted on September 29, 2022,³ and the program started on January 1, 2023, pursuant to RCW 70A.65.070. This means that covered entities, such as PSE, have been required to take compliance actions, have been incurring compliance costs and will be incurring ongoing annual compliance costs into the future.
- 9 In order to be proactive on CCA implementation issues, PSE engaged with interested parties starting with individual meetings in January 2023. Over four months from February through May 2023,⁴ PSE organized a series of workshops with eleven interested parties⁵ to discuss the CCA and associated implementation issues. The intent of these meetings was to provide education on the CCA, as well as to obtain input on potential design considerations for tariffs that would collect and distribute costs and proceeds related to the CCA. PSE appreciated the active, engaged, and respectful participation by the interested parties through all the workshops, and PSE stressed the importance of their feedback to help identify common ground and creative solutions for implementation pathways that would respect all voices. PSE incorporated feedback from interested parties into the first CCA filing it proposed on June 9, 2023, as discussed more below.

- 10 In March 2023, the Commission issued notice of Commission-led CCA workshop series

³ <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446>

⁴ See PSE's CCA Interested Parties [Meeting #1](#), [Meeting #2](#), [Meeting #3](#), and [Meeting #4](#).

⁵ The interested parties that were invited and/or participated in PSE's CCA workshops are: Alliance of Western Energy Consumers ("AWEC"), Climate Solutions ("CS"), PSE's Equity Advisory Group ("EAG"), Front and Centered ("F&C"), NW Energy Coalition ("NWEC"), Public Counsel ("PC"), Renewable Northwest ("RNW"), The Energy Project ("TEP"), Washington Conservation Action ("WCA"), Washington Utilities and Transportation Commission ("WUTC") Staff, and PSE's Low-Income Advisory Group ("LIAC").

(Docket U-230161) addressing various issues affecting the investor-owned utilities (“IOUs”), including how the CCA intersects with the IOUs obligations under CETA. The Commission kicked-off the workshop series with the first workshop on April 10, 2023, which intended to provide foundational information and presentations on the CCA. On April 10, 2023, the Commission also issued the CCA workshop series Work Plan, and notice to file written comments on the work plan by May 10, 2023.

- 11 On May 10, 2023, PSE filed Comments in Docket U-230161. As stated in PSE’s comments, there are many complicated elements of CCA implementation that would benefit from Commission consideration and guidance. The implementation of the law is complex and challenging. And, the current statute and associated administrative rules have many elements that are yet to be decided or resolved which has created much uncertainty. In addition, based on PSE’s outreach to date, there will surely be opposing opinions on particular implementation decisions, the resolution of which will not be achieved without Commission guidance.
- 12 On June 9, 2023, PSE filed with the Commission revisions to its currently effective natural gas tariff WN U-2 proposing a new tariff schedule, Schedule 111, Greenhouse Gas Emissions Cap and Invest Adjustment (“2023 CCA Filing”), that would allow PSE to recover allowance costs and pass back to customers auction proceeds mandated under the CCA. PSE incorporated feedback received from interested parties in February-May 2023 into this tariff filing. Under the proposed tariff revisions, PSE would recover costs from allowances corresponding to projected emissions from August to December 2023, and pass back credits from allowance auction proceeds projected to be received in calendar year 2023, but proportional to the August through December timeline. Bill credits consist of those provided to low-income

customers that are equal to any charges under the tariff schedule, as well as non-volumetric credits for remaining eligible customers.

- 13 On July 26, 2023, the Commission held the second Commission-led CCA workshop in Docket U-230161 which discussed no-cost allowance auction revenues to benefit ratepayers, defining “low-income,” and CCA cost recovery.
- 14 Less than three months ago, on August 3, 2023 the Commission issued Order 01 under Docket UG-230470 allowing PSE’s 2023 CCA tariff revisions to become effective subject to conditions.⁶ In Order 01, the Commission required PSE to work with interested parties to develop a risk-sharing mechanism and to propose such a mechanism in its October filing.

Finally, we require PSE to work with interested parties through the CCA workshop series in Docket U-230161 and with its Low-Income Advisory Group to develop a risk-sharing mechanism rather than a cost sharing mechanism. Although we understand the parties’ arguments for a cost sharing mechanism, CCA costs are imposed on the utility and are mandatory. We recognize, however, that the proposed tariff inappropriately places all the risks associated with CCA compliance through allowances on PSE’s natural gas customers. Accordingly, we require PSE to work with parties to develop a proposal for a risk-sharing mechanism that appropriately balances the compliance risk between the Company and its natural gas customers. The CCA is meant to serve as a price signal to both utilities and their customers, encouraging both to modify their behavior to reduce carbon emissions. The mechanism should share risk such that all parties are encouraged to reduce their emissions, and, in turn, the costs required for CCA compliance. We require PSE to propose a risk-sharing mechanism in its October filing for Commission review.⁷

⁶ On July 31, 2023, PSE filed replacement pages for the tariff, clarifying the effective date would be October 1, which would give the Company enough time to fix its billing system in line with the Commission’s Order 01.

⁷ UG-230470 Order 01, Allowing Tariff Revisions to Become Effective Subject to Conditions, at ¶ 22 (Aug. 3, 2023).

- 15 In PSE’s supplemental comments submitted on August 22, 2023, in Docket U-230161, PSE requested that the Commission set the subject of a risk-sharing mechanism on the agenda for the next scheduled workshop, on September 15, 2023. On September 11, 2023, the Commission issued the agenda for the September 15, 2023 workshop, which included CCA risk-sharing mechanism as a discussion item.
- 16 On September 15, 2023, the Commission held the third Commission-led CCA workshop. The discussion agenda included the following topics: CCA forecasting and long-term planning, including how dispatch should be modeled by utilities to consider CCA, CCA tariffs and cost recovery, and CCA risk-sharing mechanism. However, there was limited discussion of the CCA risk-sharing mechanism during the workshop.
- 17 To date, there has been only one workshop on September 15, 2023 with the Commission with minimal discussion of a risk-sharing mechanism. There has been insufficient opportunity to adequately cover the topic and provide time for necessary understanding and discussion.
- 18 On October 13, 2023, the Commission issued notice of the fourth Commission-led CCA workshop in U-230161, scheduled for November 8, 2023. This workshop includes risk-sharing mechanism as a topic of discussion (in addition to the topic of incorporating the cost of carbon in dispatch). On October 23, 2023, the Commission published the Notice of Opportunity to Provide Comments on both these topics by November 3, 2023.⁸

⁸ U-230161. Notice of Opportunity to Provide Comments and Agenda. Published on October 23, 2023. “Please provide written comments in response to the following questions by 5 PM on Friday, November 3rd to be included in the slides used in the virtual CCA workshop on November 8th, 2023. Comments submitted after November 8th will be considered but may not be included in the presentation.” (p. 1)

III. SUMMARY OF CLIMATE COMMITMENT ACT

- 19 The Cap and Invest program commenced effective January 1, 2023. Washington Department of Ecology (“Ecology”) is the implementing agency. The market-based program sets an overall cap on greenhouse gas emissions and establishes a statewide cap-and-invest program. RCW 70A.65.070 requires Ecology to determine an emissions baseline establishing the proportionate share that the total GHG emissions of covered entities for the first compliance period bears to the total anthropogenic GHG emissions in the state during 2015 through 2019, for the first four-year CCA compliance period (2023-2026).
- 20 The purpose of the CCA is for the state’s largest emitting sources and industries to steadily reduce carbon emissions and air pollution while allowing the state to invest in climate-resiliency programs, clean transportation, and address health disparities in overburdened and highly impacted communities. The program’s overall cap on emissions declines over time – covered entities must reduce their emissions and/or obtain allowances to cover remaining emissions. Ecology is also tasked to implement a program to track, verify, and enforce compliance through the use of compliance instruments.
- 21 Under the CCA, Natural Gas IOUs receive no-cost allowances for the benefit of ratepayers and must consign an increasing share of their no cost allowances to auction, while the no-cost allowances that Natural Gas IOUs receive decrease over time and are eliminated by 2050. Revenues from sale of no-cost allowances at auctions must be used for the benefit of customers with first priority to low-income customers.

IV. CONCERNS

A. PSE Already Bears the Risk Under State Law

- 22 In Order 01 of this proceeding, the Commission directed PSE to work with interested parties to develop a risk-sharing mechanism for the CCA. As previously discussed in this proceeding and in Docket U-230161, PSE remains concerned with both the legality and feasibility of developing a risk-sharing mechanism for the CCA.
- 23 The CCA is mandated by state law, and the legislature affirmatively assigned associated risks to utilities, not customers. Specifically, PSE already bears the risk of non-compliance with the CCA through penalties, pursuant to RCW 70A.65.200. Additionally, CCA compliance investments are subject to prudence review by the Commission, so PSE further bears risks in the form of potential disallowances. Therefore, PSE is concerned that the Commission's direction in Order 01 of this proceeding to work with interested parties to develop a risk-sharing mechanism conflicts with the CCA and the legislative intent behind the State's decarbonization efforts. The Commission has directed PSE to work with parties to develop a proposal that "appropriately balances the compliance risk between the Company and its natural gas customers" when the legislature has already allocated such risk solely to the Company.

B. Risk-Sharing Mechanism Diminishes Price Signals

- 24 Successful decarbonization of natural gas operations will require customers to transition from natural gas to new fuels like renewable natural gas and hydrogen, electrification, or some combination of the two. As explained in more detail below, the CCA accomplishes decarbonization through price signals to customers to encourage the transition away from

natural gas. A risk-sharing mechanism undermines the intent of the CCA by diminishing this price signal. With a lower price incentive, customers are less likely to reduce natural gas usage and transition to alternative fuels.

C. PSE Has a Statutory Duty to Serve Natural Gas to its Customers

25 Further, it is important to note that PSE — and all public service companies — are required by existing law to sell as much natural gas as demanded by its customers pursuant to a statutory duty to serve.⁹ A gas utility must “furnish . . . suitable facilities for furnishing, and furnish all available gas . . . as demanded.”¹⁰ Simply put, under the current law, PSE cannot deny or limit a customer’s request for natural gas. Moreover, there is no mechanism by which natural gas companies can force any customer to switch from natural gas service to electric service. Indeed, natural gas companies are public service companies that must “furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.”¹¹ PSE can, and will, work with interested parties to develop decarbonization plans and programs, but nothing in the CCA compels customers to take advantage of those programs. As stated previously, the primary purpose of the costs under the CCA is to send a price signal to customers to encourage them to make the transition. Requiring natural gas companies to bear some of the costs of compliance for sales required by state law stifles one mechanism that encourages customer transition and undermines the legislative intent of the CCA. Additionally, if the Commission ultimately imposes a risk sharing mechanism on PSE, it will put the Company in the position of requiring it to sell as

⁹ RCW 80.28.110.

¹⁰ *Id.*

¹¹ *Id.*

much natural gas as demanded by its customers while potentially penalizing PSE for providing that natural gas and fulfilling its statutory obligation.

D. Statutory Caps on Renewable Fuels

26 While PSE is obligated to provide as much natural gas as demanded, State laws and policies simultaneously limit the ability of gas companies to transition to new fuels. For example, RCW 80.28.385 permits natural gas companies to supply renewable natural gas for a portion of the natural gas sold or delivered to their retail customers but limits the cost of volume of renewable natural gas by imposing a cap of “five percent of the amount charged to retail customers for natural gas.”¹² PSE is currently approaching the five percent cap.¹³ This restriction severely limits the ability of natural gas companies to rely on renewable natural gas to decarbonize customer fuel supply, a limitation compounded by the fact that renewable natural gas sells at a premium price when compared to traditional natural gas.

E. It is Premature to Develop an Appropriate Risk-Sharing Mechanism

27 It is also unwise to implement a risk sharing mechanism now because the State laws, rules, and policies are in flux. Finding a balance between allowance-based compliance, other prudent emission reduction efforts, and associated rate impacts to customers will be key. Continuous realignment of the balance will be necessary. At this early stage of CCA implementation, it is premature to design an equitable, fair and reasonable risk-sharing mechanism. The uncertainty surrounding allowance-based compliance mirrors other risks associated with determining a reasonable pathway for CCA compliance such as the shifting policy landscape with aspects of

¹² RCW 80.28.385(1).

¹³ See UG-230769 for more information.

rulemaking still underway or future rulemaking expected, price and availability of future emissions reduction technologies, and others. A better understanding of these risks is necessary prior to the development of a risk-sharing mechanism, as is an understanding of the specific objectives of the mechanism.

F. Risks Must Be Within PSE's Control

28 If utilities are expected to adopt risk-sharing mechanisms that seek to evaluate emission reductions relative to purchasing allowances for CCA compliance, at a minimum, the mechanism should be based around measurable and quantifiable elements under utility management control. Factors currently at play here are beyond the control of utility management, including weather, changes in demand, CCA allowance prices, changes in the broader economy, and statutory and regulatory mandates. To require PSE to share costs for factors beyond its control violates long-standing regulatory principles of risk and reward. When we share risks, we share rewards. But imposing a risk-sharing mechanism under the current CCA framework shifts the risks and costs of compliance to PSE while CCA-mandated customer rewards such as benefits from consignment of no-cost allowances continue, by statute, to flow only to customers.¹⁴ Furthermore, while utilities can offer incentives to change consumer behavior, customers are ultimately the ones who must change their energy usage or take the action to follow through with a decarbonization or electrification project. It will be challenging to design a risk-sharing mechanism that isolates factors under utility control, especially for the gas system, where usage is highly dependent on weather and customer behavior.

¹⁴ See RCA 70A.65.130.

29 Finally, shifting costs to PSE in the form of a risk sharing mechanism will ultimately reduce the resources available to the Company to implement innovative decarbonization and electrification endeavors.

V. PSE ENGAGEMENT ON TOPIC

30 As was also mentioned in the Introduction and Background sections above, PSE has taken the following steps to engage with interested parties on this issue:

- a. PSE organized a meeting on August 31, 2023, of the interested parties that submitted comments on this topic into the tariff filing. Parties were far apart in their ideas during this conversation. For example, NW Energy Coalition (“NWEC”) and Climate Solutions did not see the need to focus on things within the utilities control – an item that is important to PSE. Other than the proposal previously submitted by NWEC, no specific ideas were shared.
- b. PSE initiated a discussion during our September 18, 2023 LIAC meeting. LIAC members were confused about this issue being brought to the LIAC and generally didn’t have any comments.
- c. PSE requested it be on the agenda for the September 15, 2023 workshop in the Commission-led CCA Docket U-230161. Unfortunately, there was very little discussion on the topic during this workshop.
- d. PSE also engaged with other gas utilities, on September 13, 2023 and September 25, 2023, in an effort to come up with tangible risk-sharing mechanism ideas.

31 As a result of above legal concerns and engagement discussions, PSE believes more consideration and discussion, among interested parties and all of the gas utilities, is needed to

figure out if there is a workable mechanism that can be implemented in a matter consistent with state law that is fair, reasonable and achieves intended outcomes.

32 As a result of the above interested party discussions, which indicated a clear message of the importance of PSE performance regarding the state’s decarbonization goals and policies, PSE considered whether performance based regulatory concepts could be used to inform the design for a risk-sharing mechanism. In 2021, the Washington state Legislature passed Engrossed Substitute Senate Bill 5295 (ESSB 5295), an act relating to transforming the regulation of gas and electrical companies toward multi-year rate plans and performance-based ratemaking. Since the passage of ESSB 5295, the Commission has been considering performance-based approaches through Docket U-210590. The following proposal is developed using a performance incentive mechanism (“PIM”) type approach. This initial risk-sharing mechanism concept is submitted with a recommendation that the Commission use future workshops in the Commission-led CCA Docket U-230161 to explore intended outcomes and specific mechanism concepts in more detail prior to adopting any particular mechanism.

VI. RISK-SHARING MECHANISM PROPOSAL

A. Risk-Sharing Mechanism

33 PSE currently evaluates long-term CCA strategy in its Integrated Resource Plan (“IRP”) as part of the planning for its natural gas system. This process considers many elements to plan for the needed investments in the overall system to achieve the lowest reasonable cost of service for customers. This current planning process makes it difficult to identify discrete decarbonization investments that reduce CCA compliance obligations because actions in the IRP are evaluated

based on overall value to the system not specifically to CCA compliance – although that is one of the many factors considered. Any reasonable risk-sharing mechanism focusing on CCA requires the ability to isolate decisions and actions under utility control that contribute to effective CCA compliance. While this is a difficult task, it might be possible to examine this issue as a part of the next IRP. After talking to interested parties, PSE developed the following preliminary risk-sharing mechanism proposal, but stresses that more discussion and consideration are needed.

B. Risk-Sharing Mechanism Proposal

34 Notwithstanding all the concerns that PSE stated above, because it is required to do so per Order 01, PSE outlines below a risk-sharing mechanism proposal for this compliance filing for evaluation¹⁵ by the Commission.

35 In its next IRP, PSE could provide a decarbonization strategy that would include decarbonization actions to comply with the CCA. These actions would have associated goals for investment, emissions reductions, or demand reductions that apply to either PSE, customers, or both. PSE would work with interested parties to develop specific incentive or penalty thresholds that tie to the associated goals in preparing the filing.

36 This concept was developed through conversations with interested parties through the CCA workshop series in Docket U-230161 and the LIAC, in compliance with Order 01. PSE has identified the following issues that warrant further consideration in evaluating this risk-sharing mechanism proposal, including:

¹⁵ PSE notes the order does not require that such proposal be implemented - it only requires it be evaluated by the Commission.

- a. How would energy efficiency be incorporated into such a mechanism given that energy efficiency targets with penalties are already required by natural gas utilities?
- b. What are appropriate incentive and penalty signals or thresholds?
- c. How does PSE focus incentives and penalties on aspects of the decarbonization plan that are primarily in utility control?

VII. CONCLUSION AND RECOMMENDATION

37 PSE has pursued the very limited options available to it under law, and PSE has little to no control over decarbonization of the gas system without legislative, regulatory, and other reforms. Until those reforms are implemented, it is premature to impose a risk-sharing mechanism for CCA that will contradict long-standing regulatory principles and make it more difficult to achieve decarbonization goals. PSE respectfully requests the Commission issue an order approving this compliance filing and requiring further discussions on the topic of a potential risk-sharing mechanism proposal for CCA in Docket U-230161.

DATED this 31st day of October, 2023.

Puget Sound Energy

By /s/ Wendy Gerlitz_____

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