U-230161

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Kathy Hunter, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Docket U-230161 – Commission-led Workshop Series on Climate Commitment Act, Comments of Puget Sound Energy

Dear Acting Executive Director Hunter:

Puget Sound Energy ("PSE") provides the following comments to the Washington Utilities and Transportation Commission ("Commission") in response to the Notice of Opportunity to File Written Comments ("Notice") issued in Docket U-230161 on August 30, 2023.

The Notice states that the Commission will convene a third hybrid workshop on Friday, September 15, 2023, to discuss risk-sharing mechanisms, incorporating the cost of carbon in dispatch, and ensuring long-term planning is consistent with the 2021 Climate Commitment Act[1] ("CCA" or "Cap and Invest Program").

The Notice also requests comments on a set of questions, with a deadline on Thursday, September 7th. With the short timeline provided for comments, PSE submits the following initial responses to the questions in the Notice but reserves the right to provide additional comments in future workshops and comments to this docket.

1. ***What are the necessary elements for an equitable, fair, and reasonable risk-sharing mechanism, as required by Order 01 in Docket UG-230470?***

A risk-sharing mechanism for CCA compliance costs may not be necessary and may go beyond the Commission's existing authority. Compliance with the CCA is mandated by state law. Utilities are already subject to compliance risk through penalties that will be assessed upon

[1] Climate Commitment Act, 2021 Wash. Sess. Laws, ch. 316 (codified at Chapter 70A.65 RCW).

failure to comply with the CCA. Additionally, CCA compliance investments are subject to prudence review by the Commission.

Decarbonization of natural gas operations will require a customer transition—whether that transition is a change to new fuels like renewable natural gas and hydrogen, a shift to electrification, or some combination of the two. The purpose of the CCA is to send a price signal to customers to encourage such a transition. A risk-sharing mechanism undermines the intent of the CCA by mitigating the intended price signal, which could have the unintended effect of encouraging customer delay in transitioning to a different fuel source or reducing usage. The Commission cannot place natural gas companies in the position of requiring natural gas companies to sell as much natural gas as demanded by its customers pursuant to an affirmative, statutory duty to serve as a public service company, and then require natural gas companies to bear compliance costs associated with that public service obligation.

State laws and policies currently limit the ability of gas companies to transition to new fuels. 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." 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. Even if the legislature were to remove this cap, other state policies limit the benefit of renewable natural gas. For example, the Department of Ecology has not issued rules for book-and-claim accounting for renewable natural gas under the CCA, thereby making it difficult for utilities to acquire fuels that meet the requirements of the CCA.

Furthermore, 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 with an affirmative obligation to serve under RCW 80.28.010 and must "furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable." The obligation to serve neither permits natural gas companies to limit a natural gas customer's usage of the commodity nor allows natural gas companies to require any natural gas customer to switch to an alternative fuel or to electrify. 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.

Beyond those objections, there are different kinds of risks associated with determining a reasonable pathway for gas utility CCA compliance such as allowance market risks, the shifting policy landscape with aspects of 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.

The Commission's Order 01 in Docket UG-230470 (Aug. 3, 2023)[2] appears to focus on the "risk that PSE would comply with CCA through allowances only, in perpetuity, without taking actions to reduce emissions." Finding a balance between allowance-based compliance, 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 may be premature to design an equitable, fair and reasonable risk-sharing mechanism.

If utilities are expected to adopt risk-sharing mechanisms that seek to evaluate emission reductions relative to purchasing allowance for CCA compliance, at a minimum, the mechanism should be based around measurable and quantifiable elements under utility management control. Factors beyond the control of utility management are factors such as, for example, weather, changes in demand, CCA allowance prices, changes in the broader economy, or legal or regulatory mandates. 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.

2. ***At what frequency, and under what conditions, should utilities be required to file CCA forecast updates, as required by Order 02 in Docket UE-220797?***

The CCA requires the Department of Ecology (Ecology or "Department") to adopt an allocation schedule (by October 1, 2022) in rule for the first compliance period,[3] consistent with a forecast approved by the Commission, of each investor-owned utility's supply and demand,

[2] Order 01 (Aug. 3, 2023) Docket UG-230470 §22 (pp. 5-6) "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."

[3] The first compliance period under the Climate Commitment Act is calendar years 2023 through 2026. *See, e.g.,* RCW 70A.65.070(1)(a).

and the cost burden resulting from inclusion of the covered entities in the first compliance period.[4]

Pursuant to RCW 70A.65.120(2)(b),[5] WAC 173-446-230(2)(c)(i), and the Notice Requiring Petitions Requesting Approval of Forecasts Pursuant to RCW 70A.65.120 ("Petition Notice") issued by the Commission on September 30, 2022,[6] PSE submitted a petition to the Commission on October 31, 2022 (Docket UE-220797) for approval of PSE's forecasts of demand and resource supply for the first compliance period (2023-2026) under the CCA ("Forecast Petition").

Commission's Petition Notice also requested that each investor-owned electric utility address in its forecast petition whether the Commission should permit annual updates to the four-year demand and resource supply forecasts.[7] Pursuant to this request and for the reasons set forth in PSE's Forecast Petition (Oct. 31, 2023),[8] PSE suggested that the Commission should allow—but not require—electric utilities to submit annual updates to the utility-specific demand and resource supply forecasts for a compliance period.

In its Final Order,[9] the Commission agreed with PSE's recommendation that the Commission should allow, but not require, electric utilities to submit an update to the demand and resource supply forecasts. This approach continues to be reasonable; utilities should be able to submit updates to utility-specific demand and resource supply forecasts as necessary for accurate forecasting. At least during the initial years of the CCA program, PSE may find it necessary to submit annual forecasts correlated with and timed in close proximity to our Power Cost Adjustment (PCA) filings. However, it is possible that not all electric utilities will be similarly situated and those utilities may not have a need to file annual updates. Annual updates should be permitted, but not required.

No additional guidance is needed from the Commission on this topic at this time.

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[4] *See* RCW 70A.65.120(3).
[5] RCW 70A.65.120 Allocation of allowances to electric utilities. (2): "(b) By October 1, 2022, the department shall adopt an allocation schedule by rule, in consultation with the department of commerce and the utilities and transportation commission, for the first compliance period for the provision of allowances at no cost to consumer-owned and investor-owned electric utilities. This allocation must be consistent with a forecast, that is approved by the appropriate governing board or the utilities and transportation commission, of each utility's supply and demand, and the cost burden resulting from the inclusion of the covered entities in the first compliance period."
[6] The Petition Notice required each investor-owned electric utility to submit petitions requesting "approval of four-year demand and resource supply forecasts for the years 2023-2027 [*sic*] pursuant to RCW 70A.65.120 . . . by 5 p.m. on Monday, October 31, 2022." *See* Notice at 2. Although the statute and the rule require Commission-approved forecasts for the first compliant period (i.e., calendar years 2023-2026), the Notice requires petitions for approval of forecasts for a five-year period (calendar years 2023-2027). The Commission subsequently issued an errata clarifying that the reference to "years 2023-2027" should have referred to "years 2023 through the end of 2026."
[7] The Petition Notice at 2.
[8] The Forecast Petition at 10-11. Puget Sound Energy's Petition for Approval of PSE's Forecasts Pursuant to RCW 70A.65.120 (October 31, 2023). Docket UE-220797.
[9] UE-220797 Order 01 (January 24, 2023) at 5.

3. Under what circumstances should utilities create separate tariffs for recovery and pass-back of CCA costs and proceeds?

Electric CCA Costs

PSE discussed this topic in prior comments[10] filed in this docket as well as in its compliance filing made on August 1, 2023 under Docket UE-220066.[11] Uncertainty and ambiguity around the allocation and adjustment mechanism of no-cost allowances by Ecology create complications for how utilities should approach cost recovery for electric CCA allowances. PSE is still evaluating whether and how it will approach cost recovery of electric CCA costs and pass-back of proceeds to the extent applicable.

Natural Gas CCA Costs

For natural gas, PSE supports the inclusion of CCA compliance costs and the pass back of auction proceeds in a separate stand-alone tariff. CCA compliance is a statutory obligation outside of PSE's control. CCA compliance periods are four years in length and the costs to comply must be estimated for each compliance year, but final costs will not be known until the year following the final compliance year.

A separate tariff will permit the appropriate and timely recovery of CCA compliance costs incurred throughout the four-year compliance periods. Inclusion of CCA compliance costs in a separate rate schedule provides needed flexibility to properly account for and true-up the costs and proceeds for customers, especially considering the potential for utilities to be in multiyear rate plans under which rates may not change for up to four years.

Waiting for inclusion of CCA compliance costs in a general rate case will lead to a delay of cost recovery ultimately resulting in unnecessary rate shock given the magnitude of expenditures needed to comply with the first four-year compliance period. Additionally, customers have a large part to play in the reduction of GHG emissions (whether through lower use or adoption of cleaner alternatives) and the longer it takes for customers to receive the price signals of the Cap and Invest Program, the lower the motivations for emission reduction actions.

More importantly, a stand-alone tariff is necessary to afford adequate cost transparency to retail customers/interested parties and to ensure the rates charged are just and reasonable. Under a separate tariff structure, parties have the ability to see costs specifically associated with the Cap and Invest Program, both the cost of allowances and the costs of potential decarbonization projects funded by auction proceeds. Conversely, shifting CCA compliance costs to base rates will only reduce transparency as CCA costs will not be as readily available for review and adjustment if

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[10] PSE Comments (May 10, 2023) at 2 and 5. Docket U-230161.
[11] PSE Cover Letter (August 1, 2023). Puget Sound Energy's 2024 Baseline Rate – Complex Changes to the PCA Baseline Rate. Dockets UE-220066, UG-220067 & UG-210918 (Consolidated).

they are embedded in base rates in the same manner that they be available for review in an established rate schedule filing as was proposed by PSE in Dockets UG-230470 and UG-230471.

4. ***Under what circumstances should utilities incorporate CCA costs and proceeds into general rate cases?***

As mentioned in PSE's response to Question 3 above, while there may be circumstances under which it makes sense for a utility to incorporate CCA costs and proceeds into a general rate case, a separate tariff for gas CCA compliance costs and proceeds appears to have more benefits. Incorporating the costs into base rates in a general rate case will further delay CCA compliance cost recovery, contributing to delayed price signals to customers, delayed emission reduction actions, higher rate shock given the level of expenditures needed for CCA compliance, and will decrease CCA compliance cost transparency.

5. ***In Workshop 2, interested persons indicated that utility Low-Income Advisory Groups were best situated to discuss the requirements concerning low-income customers under the CCA. Should the Commission convene a "Joint Low-Income Advisory Group," which could convene, discuss outstanding issues relating to low-income customers under the CCA, and submit a proposal to the Commissioners? The outstanding issues include those identified in the agenda for Workshop 2 and discussed in comments in this docket.***

No, the Commission should not convene a "Joint Low-Income Advisory Group" because circumstances for elements pertaining to low-income customers may vary between utility service territories. Instead, PSE recommends that the Commission issue a request for formal comments on the outstanding issues relating to low-income customers under the CCA, including those identified in the agenda for Workshop 2, and encourage utilities and their Low-Income Advisory Groups to work together to provide comments and recommendations.

6. ***What guidelines should the Commission issue to ensure long-term utility plans are consistent with CCA rules? For example:***

   What should the ramifications be if a utility's long-term plans:
   1) Exceed the emissions ceiling set by RCW 70A.45.020,
   2) Require purchasing excessive price ceiling units pursuant to RCW 70A.65.160, or
   3) Model allowance purchases that are greater than a utility's proportional share of statewide allowances?

   In the case of the scenarios above, how should utilities demonstrate that decarbonization, or other methods for CCA compliance, are NOT the least reasonable cost pathway?

Washington utilities conduct integrated resource plans to identify the lowest reasonable cost demand and supply resources to meet customer energy needs over the planning horizon.

Integrated resource plans ("IRPs") evaluate loads and resources over a variety of future conditions integrating costs and risk analysis to determine the preferred resource strategy. IRPs are conducted and filed with the Commission every 2-4 years.

One of the most challenging aspects of integrated resource planning is evaluating and making assessments and decisions based on uncertain future conditions. Evolving state policy contributes to this future uncertainty. It is challenging to model the effects of new, complicated statutes, such as the CCA, under which rules are still developing or are expected to evolve.

The Commission has the authority to issue guidance and/or promulgate additional rules that provide direction to utilities regarding the treatment of statutes or other elements in integrated resource plans. In the absence of specific guidance, utilities will conduct analysis and make determinations to the best of their knowledge, in coordination with engagement processes with advisory groups or other interested parties.

PSE is uncertain what is intended by the question above in terms of "the ramifications" of specific assumptions in a utility integrated resource plan. In the absence of guidance or rules setting forth expectations for specific assumptions for CCA in resource planning, "ramifications" associated with resource modeling and assessment decisions might not be appropriate or warranted. Notwithstanding this objection to the manner in which this question is framed, the following sections attempt to discuss the uncertainties around each element in the question above.

1) The limitations set by RCW 70A.45.020 are statewide goals for emissions reductions in Washington State. The applicable section states that "*the department shall submit a greenhouse gas reduction plan for review and approval to the legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature*." Several factors indicate the possibility that additional allowances would be available under certain conditions.

    a. Price control: RCW 70A.56.160 (2) requires that "*In the event that no allowances remain in the allowance price containment reserve, the department must issue the number of price ceiling units for sale sufficient to provide cost protection for covered entities...*" indicating that any attempt to limit the amount of allowances issued will be superseded if there is demand beyond that amount at the price ceiling.

    b. Linkage: A cap and invest system functions by incentivizing market behavior to reduce emissions in the most cost-effective manner possible. There is also precedent for other geographic jurisdictions to link cap and invest programs to create a broader pool of available greenhouse gas (GHG) emission reduction opportunities as has been seen with the joint market shared by California and Quebec. Especially under the future scenario where Washington's CCA program is linked to other jurisdictions, such as California and Quebec, it is possible that a broader pool of GHG emission reduction opportunities will be available to comply with a linked cap and invest program. The CCA statute was designed with the expectation of linkage and Washington is currently in the process of evaluating linkage, determining whether it is beneficial to our state's environment, economy and communities.

2) PSE is uncertain what would constitute purchasing "excessive price ceiling units". However, as noted above, RCW 70A.56.160 specifically gives the department authority to issue additional price ceiling units for sale "sufficient to provide cost protection for covered entities." Consequently, utility planning for purchases of allowances at the price ceiling is entirely consistent with the statute.

3) To the extent that individual utility emissions or a class of sector-specific emissions are not subject to specific limitations, it may not make sense to evaluate specific utility emissions relative to these statewide goals. At present, the state of Washington has elected to use a cap and invest system, under CCA, as the primary greenhouse gas emission reduction policy (in addition to the Clean Energy Transformation Act (CETA) for the electric sector). As discussed above, a cap and invest system functions by incentivizing market behavior to reduce emissions in the most cost-effective manner possible. It also allows for other geographic jurisdictions to link cap and invest programs to create a broader pool of available GHG reduction opportunities. Especially under the future scenario where Washington's CCA program is linked to other jurisdictions, such as California and Quebec, it is possible that other GHG emission reduction opportunities will be lower cost than the proportional share of statewide goals by specific utilities. This is the nature of a market-based approach to GHG regulation. Consequently, especially for gas utilities, in the absence of complementary legislation (such as CETA for the electric utilities, which does specifically enforce clean energy requirements), it is not consistent with the CCA to impose a hard cap on utility emissions in future years and utilities are not subject to a statutory "proportional share" of allowances.

   Absent specific Commission guidance or rules regarding the share of allowances a particular utility should plan to acquire in the future, utilities have no basis in the CCA statute or current implementation rules to limit the availability of allowances as a compliance mechanism in future years.

7. *Are there any other priority issues that have arisen since comments were last filed?*

Nothing at this time.

Thank you for the opportunity to provide comments on the draft work plan for the Commission-led workshop series on the Climate Commitment Act. Please contact Kelima Yakupova, State and Regional Policy Consultant, Regulatory Policy, at (425) 462-3588

(Kelima.Yakupova@pse.com) or Susan Free, Director, Revenue Requirements and Regulatory Compliance, at (425) 456-2105 (Susan.Free@pse.com) for additional information about these comments. If you have other questions, please contact me.

Sincerely,

/s/ Wendy Gerlitz

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