



April 20, 2020

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Rulemaking Lead  
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360-407-7558

Re: Comments on Draft Rule Outline, Clean Energy Transformation Rule, Chapter 173-444 WAC

Dear Ms. Dererie,

Thank you for the opportunity to participate in the process of developing the Department of Ecology's Clean Energy Transformation Rule, Chapter 173-444 WAC, implementing the parts of the Clean Energy Transformation Act assigned to Ecology.

Front and Centered is a statewide coalition of organizations and groups rooted in communities of color and people with lower incomes. Our mission is to advocate for and represent these communities in connection with economic and environmental change. Communities of color and people with lower incomes are the first hit by extraction, pollution, and climate change, which exacerbates existing health and economic disparities. Frontline communities are often left out of, or are the last to be included in, the transition to a healthy, resilient, and sustainable future. We appreciate being included in this rulemaking process.

In carrying out our mission, we comment here on the Draft Energy Transformation Project Rule Outline (v. 1.3, dated 2/6/20), published by Ecology on its rulemaking website, <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-444>. We appreciate the UTC's attempt in this rulemaking to take robust and full consideration of the CETA's equity mandate in RCW 19.405.045(8).

Ecology must revise its draft Energy Transformation Project rule outline to incorporate equity into the mandatory project criteria for Energy Transformation Projects.

In its draft rule outline, Ecology proposes to create an "initial list of potentially-eligible types of energy transformation projects." In order for a project category to be included, it must be capable of "providing benefits to the customers of an electric utility or electric utilities," among other requirements. CETA requires that these customer benefits be provided equitably, and Ecology must modify its proposal accordingly.

Specifically, Ecology must add to the requirement that projects be capable of "providing benefits to the customers of an electric utility" to clarify that all project and program categories must promote an equitable distribution of these customer benefits. RCW 19.405.040(8). As CETA requires, this equitable distribution of customer benefits from Energy Transformation Projects must include an "equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and



highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.”

The equity mandate in RCW 19.405.040(8) plainly applies to Energy Transformation Projects. That mandate requires utilities to ensure all customers are benefiting from the transition to clean energy in complying with “this section.” Earlier in that “section,” RCW 19.405.040(1) requires utilities to reduce their greenhouse gas emissions and allows utilities to use energy transformation projects as one means of meeting these mandatory reductions. RCW 19.405.040(1)(b)(3). Moreover, the definition of “energy transformation project” includes a requirement that such projects “provide benefits to the customers of an electric utility,” RCW 19.405.020(18), and the equity mandate requires that such benefits be distributed equitably, RCW 19.405.040(8). *See also* RCW 19.405.010(6). Energy Transformation Projects must comply with the equity mandate.

Ecology’s rule establishing criteria for Energy Transformation Projects must include the equity mandate. The equity mandate is directed to utilities, but that does not allow Ecology to omit it in its implementing rule. The greenhouse gas reduction requirements and the authority to use Energy Transformation Projects are likewise directed to utilities, *see* RCW 19.405.040(1), but Ecology (and other agencies) have a clear role in establishing criteria and rules that govern utilities’ statutory responsibilities, *e.g.* RCW 19.405.040(2). As with the emission reduction requirements, the equity mandate is directed at utilities and Ecology and other agencies have a key role in defining the contours of this obligation through rulemaking.

CETA explicitly requires Ecology to establish criteria governing utilities’ investments in Energy Transformation Projects. RCW 19.405.040(2). Responsibility for ensuring that Energy Transformation Project criteria complies with CETA, including the equity mandate, accordingly rests squarely with Ecology. Other agencies, including the UTC and Department of Commerce, may be responsible for other rules that implement other CETA obligations, including the equity component of those obligations. But Energy Transformation Project criteria rest squarely with Ecology, and Ecology must ensure those criteria comply with the statute.

Promoting equity is a core purpose of CETA, and each agency and utility must prioritize equity considerations at every stage of CETA’s implementation. Punting all considerations of equity until later in the process of selecting individual Energy Transformation Projects would be contrary to the specific requirements of CETA and would undermine its core purpose. It would also create substantial confusion if Ecology were to include categories of projects and programs in its initial rule that in fact do not comply with CETA because they do not promote equity. Encouraging utilities to propose projects that cannot meet CETA’s equity requirements is not a wise use of agency or utility resources. Instead, Ecology must ensure that equity is considered at each stage of the process – starting with Ecology’s rule identifying categories of projects and programs and continuing through selection of individual projects.

Front and Centered appreciates the opportunity to comment, and we look forward to further discussions as Ecology continues to revise the rule outline.

Regards,

Deric Gruen  
Program and Policy Director