

March 23, 2020

Bill Drumheller
Air Quality Program, Department of Ecology
300 Desmond Dr SE
Lacey, WA 98503

RE: WPUDA Comments Regarding the Department of Ecology’s Draft Rule Approach to Implementing Standards for Energy Transformation Projects Under the Clean Energy Transformation Act (Chapter 19.405 RCW)

Dear Mr. Drumheller:

Thank you for the opportunity to comment on the Department of Ecology’s (Ecology) Draft Energy Transformation Project Rule Outline (Outline) for the Energy Transformation Project (ETP) Rule as presented in the March 16 teleconference. The Washington Public Utility Districts Association (WPUDA) represents 27 public utility districts and one joint operating agency, Energy Northwest, in Washington State. Our members provide very low carbon electricity services to over 30 percent of the retail electric customers in Washington. Consistent with our comments of February 21, 2020, WPUDA finds Ecology’s regulatory approach to be contrary to the intent of the Legislature when they enacted the Clean Energy Transformation Act (CETA) and quite possibly, with the Act itself.

Given the obvious potential impacts to electric utilities and the communities they serve, WPUDA actively participated in the legislative process to create the Clean Energy Transformation Act (CETA) even prior to the original bill, and throughout its many iterations up to the Governor’s signature. We understand that the Legislature’s intent for CETA applies derivatively to ETPs: “leading the transition to a clean energy economy” (RCW 19.405.010(1)), “maximization of family wage job creation” (RCW 19.405.010(2)), “transition to one hundred percent clean energy [faster]” (RCW 19.405.010(3)), “encourage and provide incentives for clean alternative energy sources” (RCW 19.405.010(4)), and “spur transformational change in the utility industry” (RCW 19.405.010(5)). To achieve these intentions, utilities need to have completed EPT “criteria” and “conversion factors” consistent with CETA’s deadline, January 1, 2021.

Instead, Ecology is developing a protocol with no criteria or conversion factors – an approach not contemplated by CETA. The stakeholder materials provided at the March 16 conference call included the following statement: “A good definition for a protocol in the context of CETA would be a document that makes actionable the criteria for ETPs required in law.” (page 12) This statement leads WPUDA to understand that even Ecology recognizes that protocols are above and beyond its statutory mandate. More troubling is that under the protocol proposal

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developers must suggest ETP criteria to Ecology and then the agency will pass judgement on whether that criteria is statutory sufficient. WPUDA is at a loss to understand how Ecology can find this consistent with the statute which states that ETPs “...must use criteria developed by the department of ecology” (RCW 19.405.040(2), emphasis added). Similarly, CETA states in no uncertain terms that “...the department of ecology must establish a conversion factor of emissions reductions resulting from energy transformation projects to megawatt-hours of electricity from non-emitting electric generation...” (RCW 19.405.040(2), emphasis added). And it appears that Ecology has no intention of completing either of these statutory mandates by CETA’s rulemaking deadline of January 1, 2021.

In the March 16 conference call WPUDA also learned that Ecology continues to contemplate a role in project approval related to verification. However, we read CETA to limit Ecology’s role in this area to the development of verification procedures. The utility’s governing board is responsible to ensure CETA compliance – including the following of established ETP verification procedures. The State Auditor’s Office will audit utility compliance with all parts of CETA and will refer to the State Attorney General cases where established compliance criteria were not followed or inappropriately applied.

WPUDA fears that the consequence of Ecology’s extra-legal regulatory approach will be uncertainty amongst ETP developers that will cause delays or even abandonment of the very transformational projects that CETA calls on the state to support. The unnecessary barriers set up by the proposed protocol approach are highly distressing and likely to undermine utility access to this important tool to help minimize compliance costs and maintain system reliability.

WPUDA’s Proposed Alternative Approach

WPUDA again asks Ecology to consider a simpler and statutorily consistent approach that starts with the array of energy transformation projects listed in RCW 19.405.020(18)(b):

- (i) Home weatherization or other energy efficiency measures, including market transformation for energy efficiency products, in excess of: The target established under RCW 19.285.040(1), if applicable; other state obligations; or other obligations in effect on May 7, 2019;
- (ii) Support for electrification of the transportation sector including, but not limited to:
 - (A) Equipment on an electric utility's transmission and distribution system to accommodate electric vehicle connections, as well as smart grid systems that enable electronic interaction between the electric utility and charging systems, and facilitate the utilization of vehicle batteries for system needs;
 - (B) Incentives for the sale or purchase of electric vehicles, both battery and fuel cell powered, as authorized under state or federal law;
 - (C) Incentives for the installation of charging equipment for electric vehicles;
 - (D) Incentives for the electrification of vehicle fleets utilizing a battery or fuel cell for electric supply;
 - (E) Incentives to install and operate equipment to produce or distribute renewable hydrogen; and
 - (F) Incentives for renewable hydrogen fueling stations;
- (iii) Investment in distributed energy resources and grid modernization to facilitate distributed energy resources and improved grid resilience;

- (iv) Investments in equipment for renewable natural gas processing, conditioning, and production, or equipment or infrastructure used solely for the purpose of delivering renewable natural gas for consumption or distribution;
- (v) Contributions to self-directed investments in the following measures to serve the sites of large industrial gas and electrical customers: (A) Conservation; (B) new renewable resources; (C) behind-the-meter technology that facilitates demand response cooperation to reduce peak loads; (D) infrastructure to support electrification of transportation needs, including battery and fuel cell electrification; or (E) renewable natural gas processing, conditioning, or production; and
- (vi) Projects and programs that achieve energy efficiency and emission reductions in the agricultural sector, including bioenergy and renewable natural gas projects.

Consistent with the directive of RCW 19.405.040(2)¹, Ecology should seek out conversion factors already developed and established by other jurisdictions including those presently used for unspecified electricity and for clean alternative fuels. WPUDA recognizes that approaches currently being used by other jurisdictions may not address every statutory requirement in CETA. However, WPUDA is confident that coupling existing factors with publicly available information, with a concerted effort Ecology can engage in a public process to propose and finalize factors for most, if not all, of the categories of ETPs within the specified statutory timeline. And in subsequent years, CETA is clear that these factors may be revised as needed.

WPUDA envisions that the end result of Ecology's efforts would be a simple matrix of projects, savings estimates, recordkeeping and reporting requirements and verification procedures. This would provide utilities the information needed to assess alternatives and determine how investments in energy transformation projects compares to other compliance approaches.

Please feel free to contact me with any questions regarding our comments or proposed alternative approach.

Sincerely,



Nicolas Garcia, Policy Director

¹ The directive for Ecology to establish conversion factors based on those previously adopted by other jurisdictions is found in RCW 19.405.040(2) – emphasis added:

Investments in energy transformation projects used to satisfy an alternative compliance option provided under subsection (1)(b) of this section must use criteria developed by the department of ecology, in consultation with the department and the commission. For the purpose of crediting an energy transformation project toward the standard in subsection (1)(a) of this section, the department of ***ecology must establish a conversion factor of emissions reductions resulting from energy transformation projects to megawatt-hours of electricity from nonemitting electric generation that is consistent with the emission factors for unspecified electricity, or for energy transformation projects in the transportation sector, consistent with default emissions or conversion factors established by other jurisdictions for clean alternative fuels.***