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Via Electronic Filing

Bill Drumheller
Washington State Department of Ecology
300 Desmond Dr. SE
Lacey, WA 98503

**Re: Chapter 173-444 WAC, Clean Energy Transformation Rule to
Implement Parts of the Clean Energy Transformation Act**

Dear Mr. Drumheller:

The Alliance of Western Energy Consumers (“AWEC”) submits the following comments to help inform the Washington Department of Ecology’s (“Ecology”) Clean Energy Transformation Act (“CETA”) Rulemaking related to Energy Transformation Projects (“ETPs”) (Chapter 173-444 WAC). AWEC is a non-profit trade association of large electric and natural gas users in the Western United States.

While AWEC agrees with other stakeholders that Ecology’s role with respect to ETPs is not to approve or disapprove any particular project, AWEC does see value in Ecology providing guidance, and potentially an advisory opinion, on whether a project qualifies as an ETP so that both the utility and the project developer can have greater certainty before undertaking the project.

AWEC believes such guidance would be particularly useful with respect to ETPs pursued under RCW 19.405.020(18)(b)(v), which identifies as examples of ETPs:

[C]ontributions 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.^{1/}

There is significant ambiguity over how a number of these examples would qualify as an ETP that Ecology's rulemaking and subsequent guidance could help resolve. AWEC, for instance, is familiar with self-directed investments in conservation – the customer undertakes these projects at its facility because it is most familiar with the complex processes of that facility and which conservation measures are most cost-effective and feasible – and can understand how the concept of self-directed investments can be extended to demand response, onsite transportation electrification infrastructure, and potentially even renewable natural gas processing. But how does a customer “self-direct” a new renewable resource? Some utility green tariff programs, for instance, provide a “customer-supplied option” in which the customer identifies a particular resource and negotiates terms with the project owner, but the utility signs the power purchase agreement with the project owner and takes title to all of the power while retiring the associated renewable energy credits in the customer's name. Would such an arrangement constitute a “self-directed investment” by a customer in a new renewable resource?

More vexing, all ETPs must “[p]rovide[] energy-related goods or services, other than the generation of electricity; result[] in a reduction of fossil fuel consumption and in a reduction of the emission of greenhouse gases attributable to that consumption; and provide[] benefits to the customers of an electric utility.”^{2/} Thus, a self-directed renewable resource apparently cannot generate electricity to qualify as an ETP. While the statutory language appears to be contradictory here, AWEC believes it is incumbent upon Ecology and other agencies with input over the development and approval of ETPs to attempt to effectuate the Legislature's intent.

As one possible example of a renewable resource that could qualify as an ETP, a customer could develop a new biomass generation facility that is fueled in whole or in part with forest debris that would otherwise be burned. This biomass facility would qualify as a “new renewable resource”; it would result in “a reduction of fossil fuel consumption” to the extent its output displaces the generation from other resources; it would provide “benefits to the customers of an electric utility” by, among other things, diversifying the utility's generation mix; and it would result in a “reduction of the emission of greenhouse gases” by consuming the forest debris for electrical generation rather than simply burning it. For purposes of crediting the utility for its CETA compliance requirements under RCW 19.405.040(2), the MWhs converted from emissions reductions would be based on the emissions reductions achieved from avoiding the carbon emissions emitted from burning the forest debris, rather than emissions avoided from displacing fossil-fuel generation. In this way, credit for the ETP would not be tied to electricity generation from the biomass facility and would instead be tied to a more efficient means of using this forest fuel.

AWEC acknowledges that this example is not a perfect fit with the definition. The biomass facility would generate electricity, and the emissions reductions from this ETP

^{1/} RCW 19.405.020(18)(b)(v).

^{2/} RCW 19.405.020(18)(a).

would not be “attributable to” reduced consumption of fossil fuels and would instead be attributable to a different means of consuming a biomass fuel. Nevertheless, some interpretive creativity appears necessary here, and this example appears to meet all criteria under a particular interpretation and, importantly, resolves the conflict between the ability of renewable resources to qualify as ETPs and the prohibition against ETPs generating electricity. AWEC would appreciate Ecology’s feedback on this concept and any additional or alternative ideas Ecology has with respect to how a customer could self-direct an investment in a new renewable resource that would qualify as an ETP.

Another question AWEC has with respect to RCW 19.405.020(18)(b)(v) relates to self-directed investments in conservation. CETA does not allow a project to qualify as an ETP if it is otherwise required by law.^{3/} Thus, because the Energy Independence Act already requires the acquisition of all cost-effective conservation, a self-directed conservation project that is cost-effective would seem to be disallowed as an ETP. But what if a project is cost-effective but requires a significant up-front investment that the customer is either unable or unwilling to make? Even though the project is cost-effective and, therefore, theoretically legally required to be pursued, neither the utility nor any state authority can require the customer to make that investment. If a utility agrees to finance the up-front investment to remove this barrier, could this project then qualify as an ETP, as it would otherwise be lost? If so, what type of demonstration would the utility and/or the customer need to make to show that the customer would not have undertaken the project but for the utility’s agreement to finance the up-front cost?

AWEC appreciates the opportunity to comment on Ecology’s ETP rulemaking and looks forward to continuing to work with Ecology and other stakeholders to address the issues raised in these comments and the other important issues Ecology must address in this rulemaking. If you have any questions, please do not hesitate to call.

Dated this 23rd day of March, 2020.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

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^{3/} RCW 19.405.040(1)(b)(iii).