

February 21, 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 Rule. 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 retail electric customers in Washington and are impacted by the Clean Energy Transformation Act (CETA) and the corresponding rules for implementation. Unfortunately, the draft Energy Transformation Project Rule Outline (Outline) as presented raises some significant concerns for the Washington Public Utility Districts Association (WPUDA) and we urge Ecology to reconsider the elements of the Outline to ensure adherence to the law for which the rule is being developed.

In our opinion, Ecology's Outline fails to meet the intention and letter of the statute. Specifically, contrary to the statute's explicit language, on January 1, 2021 utilities will have neither: a) the criteria to use investments in energy transformation projects as an alternative means to comply with CETA; nor b) any factors to convert emissions reductions from energy transformation projects into electric MWhs from non-emitting generation resources. Following is a detailed explanation of WPUDA's concerns and a proposed path forward.

Ecology's Statutory Mandates

The CETA assigns to Ecology two (and only two) specific tasks regarding energy transformation projects:¹

¹ Ecology's role related to energy transformation projects under the Clean Energy Transformation Act is specified at 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

1. Develop criteria (after consultation with the Department of Commerce and the Utilities and Transportation Commission (UTC)) that utilities must use to apply the savings associated with an energy transformation project towards compliance with the Clean Energy Transformation Act; and
2. Establish a conversion factor of emissions reductions resulting from energy transformation projects to MWhs of electricity from non-emitting electric generation.

Ecology is statutorily directed to complete these tasks by January 1, 2021.² However, Ecology verbally acknowledged during discussions at the February 12 stakeholder meeting that following its approach, the protocols utilities must use in order for investments in energy transformation projects to be eligible for alternative compliance mechanisms are likely to take “4 to 5 years” to finalize.

Ecology’s Draft Approach

As WPUDA understands it, the draft Outline would include the following steps for utilities to participate or utilize energy transformation projects:

1. An electric utility may submit a proposed protocol for consideration by Ecology. Proposed protocols must be consistent with the following:
 - **Applicability:** Description of the specific types of projects or programs to which the protocol applies
 - **Assessment boundaries:** Identification of the primary effects of the project or program, such as fossil fuel reductions or energy impacts, and key secondary effects, such as benefits to utility customers, and the geographic regions in which these effects occur
 - **Temporal scope:** Identification of the time scale over which the project or program is expected to persist, and the capability of the project or program to provide the same level of benefits overtime, in addition to any procedures for ensuring consistent benefit outputs over time
 - **Quantification methods:** Methodologies to be employed to measure effects from the project or program including proration methods, if applicable, and what conversion factor or factors will be used, if necessary, to ensure the project benefits can be expressed in units of energy

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. Emissions reductions from energy transformation projects must be:

- (a) Real, specific, identifiable, and quantifiable;
- (b) Permanent: The department of ecology must look to other jurisdictions in setting this standard and make a reasonable determination on length of time;
- (c) Enforceable by the state of Washington;
- (d) Verifiable;
- (e) Not required by another statute, rule, or other legal requirement; and
- (f) Not reasonably assumed to occur absent investment, or if an investment has already been made, not reasonably assumed to occur absent additional funding in the near future.

² The timing for Ecology to adopt these rules is specified in RCW 19.405.100(9):

Pursuant to the administrative procedure act, chapter 34.05 RCW, rules needed for the implementation of this chapter must be adopted by January 1, 2021, unless specified otherwise elsewhere in this chapter.

- **Baseline procedures:** Procedures by which to establish a baseline or benchmark against which to measure project or program performance over time
- **Fossil fuel effects:** Analysis sufficient to demonstrate that the project or program does not create a new use of fossil fuels resulting in a net increase of fossil fuel usage
- **Additionality tests:** Procedures or demonstrations that the project or program is not required by another statute, rule, or other legal requirement and also not reasonably assumed to occur absent the investment in the project or program, or if an investment has already been made, not reasonably assumed to occur absent additional funding in the near future
- **Monitoring procedures:** Plans or procedures for ensuring that project or program outcomes are measurable, observable, and recorded over time
- **Reporting strategies:** Documentation of ongoing, planned, or anticipated reporting requirements
- **Verification procedures:** Demonstration or attestation of commitment to third-party verification
- **Enforcement regimes:** A listing of any relevant regulatory or compliance authorities that have some degree of jurisdiction over the project or program.

2. Ecology will evaluate submitted protocols:

- **Completeness:** Ensure that all necessary components of the protocol and sufficient supporting materials are included and provide enough detail and clarity sufficient for evaluation.
- **Public Comment:** After determining that the documentation requirements for a potential protocol are complete, Ecology will post the relevant documents for public comment for at least 60 days.
- **Technical Review:** Ecology will evaluate the protocol using expert judgement within the agency and at Commerce, the commission, and other relevant state agencies, as well as based on the comments received during the public comment process. Ecology may convene stakeholder meetings or dialogue during this process at its discretion, based on the complexity of the issues involved.
- **Provisional Approval:** Protocols that are initially determined to meet all requirements set forth [above] will be given a “provisional approval” status.
- **Public Comment II:** Protocols that receive a “provisional approval” status will be posted for public comment for 60 days, along with the supporting documentation and other relevant information.
- **Final Determination of Protocols:** After taking into account public comments, and expert judgement, those protocols that have clearly met the standards will be judged to be “approved” and will now be eligible for the purposes of evaluating projects and programs.

3. An electric utility may submit a proposed Energy Transformation Projects protocol for consideration by Ecology. Proposed protocols must be consistent with the following:

- **Must Be New:** Proposed energy transformation projects must not exist before being proposed as a project or program intended to serve as an energy transformation project.
- **Must Be Consistent with The Protocol:** The proposed project must fall within the scope of a protocol that has been previously approved by Ecology, or that is in the process of being approved by Ecology. And must demonstrate that all requirements for the applicable protocol are capable of being met.
- **Must Include Documentation:** An application must include relevant documentation, and other supporting materials in a manner approved by Ecology.

4. Ecology will evaluate and approve Energy Transformation Project Proposals:

- **Completeness:** Ensure that all necessary components of the protocol and sufficient supporting materials are included and provide enough detail and clarity sufficient for evaluation.
- **Public Comment:** After determining that the documentation requirements for a project are complete, Ecology will post the relevant documents for public comment for at least 30 days.
- **Provisional Recognition:** Projects that are initially determined to meet all requirements set forth will be given a “provisional recognition” status. Projects may also be given an “incomplete” status or “rejected” status – for projects that appear to have no chance to resolve the identified issues.

- **Public Comment II:** Projects that receive “provisional recognition” will be posted for public comment for 30 days, along with the supporting documentation and other relevant information.
- **Final Determination of Projects:** After taking into account public comments, and expert judgement, those projects that have clearly met the standards will be judged to be “recognized” by Ecology. Projects with a “recognized” status are now eligible for consideration and ultimate approval or rejection by the governing boards of consumer-owned utilities, the UTC commission, or other applicable approval bodies.

WPUDA has multiple concerns with the approach included in Ecology’s Outline document. WPUDA’s three primary concerns are:

1. **Ecology would fail to establish the rules needed to allow utilities to use energy transformation projects by January 1, 2021, as required by the statute.** It is WPUDA understanding that a key legislative objective of CETA is to implement “...RCW 19.405.030 through 19.405.050 at the lowest reasonable cost, and at an acceptable resource adequacy standard, ...” (RCW 19.280.030(1)(I)).³ To achieve these objectives, the need to quickly establish the criteria for using alternative compliance mechanisms including energy transformation projects was widely discussed amongst stakeholders as SB5116 worked its way through the legislative development process. Stakeholders expected that Ecology could quickly adopt criteria and conversion factors to facilitate the use of energy transformation project based on work from other jurisdictions. Instead, WPUDA fears that process described in Ecology’s Outline is so cumbersome and so delayed that it effectively makes these projects unavailable for assessment within utility Integrated Resource Planning and during the development of Clean Energy Action Plans. WPUDA finds it highly distressing that utilities will not have access to this important tool to help minimize costs and maintain system reliability.
2. **Ecology would essentially abdicate its statutory responsibility to develop the criteria for energy transformation projects.** Instead, Ecology would shift the responsibility to utilities.
3. **Ecology has no statutory authority whatsoever to approve energy transformation projects.**⁴ An area of much deliberation in the development of CETA was to balance the need for utilities to demonstrate compliance with the Act’s mandates while maintaining local control of utility decision making. RCW 19.405.090 is clear that governing boards remain responsible for utilities to achieve compliance, the state auditor is responsible for auditing compliance, and the attorney general is responsible for enforcing that compliance. Ecology’s statutory role with regard to energy transformation projects is only the timely establishment of criteria and conversion factors. It is the state auditor who is tasked with evaluating compliance with those criteria/conversion factors and, if

³ CETA’s statutory intent at RCW 19.405.010(2) repeats this objective: ... ensure that the achievement of this policy does not impair the reliability of the electricity system or impose unreasonable costs on utility customers.

⁴ Sec 6(b) The governing body of the consumer-owned utility must, after 23a public meeting, adopt the consumer-owned utility’s clean energy implementation plan. Sec 9(5)(a)&(b).

necessary, it is the attorney general who will take enforcement actions if utilities inappropriately apply the criteria/conversion factors established by Ecology.

Finally, WPUDA notes that absent the availability of alternative compliance mechanisms, the only recourse left to electric utilities will be to acquire renewable energy credits (REC). While RECs are an important tool that electric utilities use to assist their compliance with renewable and environmental mandates, the absence of alternatives will drive up REC prices and these extra costs will ultimately and unnecessarily be borne by utility customers.

WPUDA's Proposed Alternative Approach

Following the February 12 stakeholder meeting, WPUDA reviewed those parts of Chapter 19.405 RCW related to Energy Transformation Projects. We believe that a simpler and statutory consistent approach forward is to start with the array of energy transformation projects specifically 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)⁵, Ecology should seek out conversion factors already developed and established by other jurisdictions, including in the electric

⁵ 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

section emissions conversion factors for unspecified electricity, and in the transportation sector conversion factors for clean alternative fuels. By using existing factors and publicly available information, there is sufficient time for Ecology to propose and finalize factors for most, if not all, of the categories of Energy Transformation Project listed in the statute. 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

WPUDA

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.***