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A DIVISION OF PACIFICORP

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August 19, 2021

VIA EMAIL

Bill Drumheller
Washington Department of Ecology
300 Desmond Drive SE
Lacey, Washington 98503

Re: Planned Updates to Chapter 173-441 WAC, Reporting of Emissions of Greenhouse Gases, as Directed by Section 33 of the Climate Commitment Act

In response to the Washington Department of Ecology's (Ecology) July 22, 2021 request for informal comment on proposed changes to its regulations for reporting of emissions of greenhouse gases, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp) respectfully submits the following comments on the draft rules. PacifiCorp appreciates the opportunity to comment and looks forward to providing further feedback once Ecology opens a formal rulemaking proceeding.

PACIFICORP'S INITIAL COMMENTS

While resolving this rulemaking in a timely manner is important, there is no statutory deadline to do so.

The Climate Commitment Act (CCA) sets an ambitious timeline for full implementation of the State's cap and trade program, with the program taking effect January 1, 2023. Currently, the procedural schedule shows a final rule in effect by March 2022, and PacifiCorp is concerned that this date may not give Ecology and stakeholders enough time to draft and vet a robust set of rules.[1] Ecology should consider extending the rulemaking if doing so proves necessary at a later stage. This might allow for at least one more round of draft rules with comments from stakeholders, as well as additional workshops.

Ecology should consider an electric power entity specific track or workshop within this rulemaking.

The electricity sector's treatment and role in the CCA and Washington's climate policy is unique: electric utilities are already subject to significant reporting requirements under other existing laws and regulations. Further, PacifiCorp and other multijurisdictional utilities are subject to reporting requirements in other jurisdictions.

There may be value in holding an electric-utility specific workshop, or even separately issuing a portion of the rules focused on electric utility reporting for comment. This would allow for separate consideration of the unique issues presented by the electric sector.

PacifiCorp appreciates Ecology's use of California's treatment of multijurisdictional utilities.

[1] *See* July 22, 2021 presentation at slide 13.

Consistent with the statute, Ecology appears to have proposed rules for multijurisdictional utilities that are conceptually similar to those used in California. However, draft WAC 173-441-124(2)(b)(iv) may require minor revisions.[2] PacifiCorp suggests that the following changes may increase the clarity of the section:

> Multijurisdictional retail providers must include emissions and megawatt-hours in the terms below from facilities or units that contribute to a common system power pool. Multi-jurisdictional retail providers **may ~~do~~** not include emissions or megawatt-hours in the terms below from facilities or units allocated to **~~serve retail loads in designated~~** states **other than Washington** pursuant to a cost allocation methodology approved by the Washington Utilities and Transportation Commission and the utility regulatory commission of at least one additional state in which the multi-jurisdictional retail provider provides retail electric service.

Annual reporting deadlines should be aligned with Oregon and California to ensure accuracy, eliminate seams, and facilitate linkage.

The draft rules currently require all covered entities to file their annual reports by March 31 of each year for emissions in the previous calendar year.[3] This deadline is not statutorily required and could be problematic for electric power entities. The March 31 deadline referenced in RCW 70A.15.2200(5)(a)(ii) refers only to emissions reports filed by emitters covered by RCW 70A.15.220(5)(a), which does not include electric power entities. While RCW 70A.15.2200(5)(a) mentions emissions from electricity, the reporting requirement is limited to emissions associated with electricity sold by a supplier or local distribution company (LDC), neither of which includes electric power entities. Emissions from electricity from suppliers and LDCs are included in the statute enclosed in offset commas, which means that the "phrase [is] set apart from the rest of the sentence."[4] Instead, electric power entities are covered by RCW 70A.15.220(2)'s general direction that Ecology "adopt rules requiring reporting of [greenhouse gas] emissions," without any particular statutory deadline.[5]

Given this flexibility, Ecology should consider adopting rules that require annual reports from electric power entities by June 1 of each year, consistent with timelines used in California and Oregon. First, this would allow for use of the most accurate data, as investor-owned utilities will likely use Federal Energy Regulatory Commission (FERC) Form 1 reported generation – the basis for this reporting – is not typically available until late spring. This information is not realistically available any earlier, as FERC Form 1 relies on other mandatory reports for data inputs, including the Securities and Exchange Commission's Form 10-K, which is due to the SEC by March 30 of each year. Second, aligning data across the three west coast states would avoid emissions under- or over-counts that would inevitably arise if different vintages of data are used by each state. Third, aligning

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[2] There appears to be a minor numbering issue with this section, as there are two WAC 173-441-124(2), one on page 157 of the draft rules, and another starting at page 170. This comment relates to the latter, specifically page 186.
[3] Draft WAC 173-444-050(2)(a)(i).
[4]" *Dep't of Revenue v. GameStop, Inc.*, 8 Wash. App.2d 74, 87 (2019), *citing E. Gig Harbor Improvement Ass'n v. Pierce Cty.*, 106 Wash.2d 707, 713 .(1986).
[5] RCW 70A.15.2200(5)(a)(ii)'s reference to "[e]ach annual report must… be submitted to the department by March 31st…" refers solely to the reports required by RCW 70A.15.2200(5)(a)(ii). Subparagraph (ii)'s placement within paragraph (5)(a) indicates that the annual reports it refers to are those required by paragraph (5)(a).

with California may be useful if the state chooses to link with California's cap and trade program. In fact, RCW 70A.15.220(5)(c) directs Ecology to "ensure consistency with emissions reporting requirements for jurisdictions with which Washington has entered a linkage agreement." While Washington has not yet linked with California, it would be sensible to adopt a rule now that does not need to be changed again in the future.

Ecology should revisit its proposed treatment of EIM imports.

The language proposed in the draft rules for addressing energy imbalance market (EIM) imports must be revised in coordination with the California Independent System Operator. Currently, the EIM optimization does not produce import reports for Washington as it does for California so EIM Entities do not have the ability to report accordingly. Further, Ecology should not adopt California's approach to EIM Outstanding Emissions absent technical analysis or other evidentiary support for doing so.

Ecology should align with California and Oregon on the emissions factor methodology.

Ecology's draft rules contain provisions requiring utilities to use the five-year rolling average of published emissions for generating facilities if EPA has not yet published emissions values for a specific year.[6] This differs from the methodologies used by Oregon and California, both of which require utilities to use the emissions data from the most recent year.[7]

This mismatch will create seams issues and inherently lead to an under or over count of emissions due solely to methodological differences. Further, if Washington moves toward linkage with California's cap and trade system, having differing methodologies may create inefficiencies and even conflicts between the two systems. It would improve regional alignment and accounting reconciliation if Ecology would adopt a similar approach by using most current year available as opposed to a five-year rolling average. Although emission factor differences between methodologies may be immaterial, they do translate to material variances in total facility emissions when considering large generating units. These differences will hinder a regional reconciliation effort.

CONCLUSION

PacifiCorp appreciates the opportunity to comment and looks forward to the formal phase of this rulemaking.

Sincerely,

_____/s/____
Mary Wiencke

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[6] *See* draft WAC 173-444-040 (2)(b).
[7] Cal. Code Regs. tit. 17, § 95111(b)(2), *available at* https://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2018-unofficial-2019-4-3.pdf?_ga=2.122137421.716002286.1627581166-75087372.1568050121 (see page 101 of linked PDF, requiring facility-specific emissions factors to be "based on data from the year prior to the reporting year").

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