April 25, 2022

Via Electronic Filing

Department of Ecology
State of Washington
P.O. Box 47600
Olympia, WA 98504-7600

RE: NW Energy Coalition's comments regarding the Clean Fuels Program Rule, Chapters 173-424 WAC, draft rule language

Dear Rachel Assink:

The NW Energy Coalition ("NWEC" or "Coalition") appreciates the opportunity to participate in the Clean Fuels Program ("CFP" or "Program") rulemaking and to provide comments on the draft rule language in advance of the CR-102. We appreciate the Department of Ecology's work to develop Washington's CFP and bring stakeholders along while navigating the complexities of the Program.

The Coalition is a public interest nonprofit that focuses on clean energy issues in the Northwest. As an alliance of more than 100 organizations, the Coalition's work focuses on energy efficiency, renewable energy, fish and wildlife preservation and restoration in the Columbia basin, low-income and consumer protections, and informed public involvement in building a clean and affordable energy future. We have participated in Oregon CFP rulemakings and continue to provide input on Oregon investor-owned utility CFP reinvestments. NWEC submitted initial comments on the Washington CFP rulemaking on December 22, 2021 and has signed onto joint comments submitted November 17, 2021 and March 14, 2022.

A Clean Fuels Program is intended to reduce the carbon intensity (CI) of transportation fuels but can be designed to also help reduce air pollution, increase access to low-CI fuels, and directly benefit overburdened communities. To maximize the benefits of the program, we encourage Ecology to adopt a carbon intensity trajectory that would require a 20% reduction in carbon intensity of fuels be achieved by the earliest date allowed in the law—2034. Our comments highlight key components of the CFP draft rule language and areas that warrant additional consideration, as detailed below.

I. Designation of Fuel Reporting Entity for Electricity (WAC 173-424-220)

NWEC is still assessing the credit claiming hierarchy for non-residential electric vehicle charging to understand the potential benefits and impacts and may provide additional comments at a later time.[1] In the meantime, **we recommend adding a backstop aggregator to WAC 173-424-220(3)(c) to ensure no non-residential electric vehicle charging credits go unclaimed.**

NWEC strongly supports the credit claiming hierarchy for residential electric vehicle charging base electricity credits.[2] We support this approach in Washington as electric utilities have a history of acting on behalf of their customers, Washington residents, with years of experience implementing customer side programs. We do want to note that there do not appear to be any guidelines within the rule for approving a backstop aggregator. **We recommend incorporating rule language that aligns with the Oregon CFP backstop aggregator eligibility requirements and approval process.**[3]

We have several concerns regarding the draft rule's incremental credit proposal.[4] First, the rule does not appear to establish a hierarchy for claiming incremental credits. Determining whether an entity is eligible to generate credits is important to reduce confusion and ensure the credits are actually claimed. **We recommend adopting the Oregon CFP eligibility for claiming residential electric vehicle charging incremental credits.**[5]

Second, while we appreciate the inclusion of smart charging as a pathway to generate incremental credits, we are concerned with the metered versus non-metered designation. We strongly encourage Ecology to remove metered charging requirements for at least this rulemaking to allow the Department to focus on adopting and implementing the Program. We understand Ecology is striving for the highest degree of accuracy for the Program but we have not seen evidence that a non-metered approach is inaccurate and we foresee it being overly burdensome for Ecology and participating entities. To balance the interests of accuracy with ease of administration, **we recommend: (1) allowing for incremental credit generation through smart charging without designating it as metered EV charging since metering is inherent in a smart changing program; (2) removing metered requirements as it relates to electricity under the CFP; and, (3) removing the use of Renewable Energy Certificates (RECs) solely to demonstrate lower CI electricity.** We will expand on the second and third recommendation throughout our comments.

II. Specific Reporting Parameters for Electricity Used as a Transportation Fuel (WAC 173-424-SRR(3))

[1] WAC 173-424-220(3)
[2] WAC 173-424-220(7)(a)
[3] OAR 340-253-0330(10)
[4] WAC 173-424-220(7)(b)
[5] OAR 340-253-0330(11)(b)

In general, we feel the reporting requirements and other sections of the CFP rule related to electricity do not sufficiently clarify whether the requirements are in place to support the generation of base electricity credits or incremental electricity credits. To clarify the purpose of the reporting requirements, **we recommend amending WAC 173-424-SRR(3)(a) to:**

> To claim a carbon intensity other than a statewide or utility-specific mix <u>for the purpose of claiming incremental credits</u>, or <u>to claim credits associated with electric vehicle charging</u> directly connected <u>to</u> renewable power under the Lookup Table in WAC 173-424-TBLS, a registered party must:

NWEC appreciates the requirement for electric utilities to report their efforts to minimize adverse impacts to the electrical grid.[6] Harmonizing the CFP with efforts to optimize EV charging, mitigate grid impacts, and reduce the need for new gas-fired power plants is essential to meet Washington's greenhouse gas emission reduction targets. While we generally agree with the intent of the language, **we request Ecology: (1) further explain the purpose of this language; (2) maintain a variation of this language while removing the non-metered versus metered designations; and, (3) consider the following changes to WAC 173-424-SRR(3)(b)(ii):**

> The electric utility must ~~provide~~ <u>demonstrate their programs and</u> rate<u>s</u> ~~options that~~ <u>integrate demand side management to</u> encourage off-peak charging and minimize adverse impacts to the electrical grid;

We generally support requirements on the use of electricity credit revenue to provide benefits to Washington residents and **we are interested in learning more about WAC 173-424-SRR(3)(b)(iv)**. If the goal is to encourage a virtuous cycle of investments to accelerate transportation electrification, there should be additional requirements to ensure benefits accrue to Washington residents and are targeted to provide direct benefits to overburdened communities.

As previously stated in our comments, we strongly encourage Ecology move forward with a non-metered residential electric vehicle charging approach and hold off on incorporating a metered residential electric vehicle charging approach until a future rulemaking.[7] To address potential concerns related to a non-metered electric vehicle charging approach, which is what the Oregon CFP uses, **we recommend Ecology remove metered electric vehicle charging requirements for this rulemaking, start implementing the program, and then assess the benefits and impacts of incorporating a metered electric vehicle charging approach to inform future updates to the CFP rule.**

III. Determining the Carbon Intensity of Electricity (WAC 173-424-DCIE)

[6] WAC 173-242-SRR(3)(b)(ii)

[7] WAC 173-242-SRR(3)(b) and (c)

NWEC supports the use of a single-year CI for a utility-specific electricity mix that is updated annually.[8] Adopting a single-year CI for a utility-specific electricity mix allows utilities and retail customers served by utilities to benefit from the retirement of coal- and gas-fired power plants and the addition of new renewable resource generation to the grid with relatively small effects from hydropower system variability. Ultimately, this would result in increased base credit generation as utilities lower their electricity mix CI.

The draft rule language assigns unspecified power the same emissions as generated using natural gas.[9] While we recognize this is consistent with the Clean Energy Transportation Act, we are open to Ecology adopting the ICCT's recommendation for unspecific power.[10][11] This would assign a Washington specific emissions factor for unspecified power.

NWEC does not support the use of offsite renewable electricity through the purchase and retirement of RECs solely to demonstrate a lower CI under the Washington CFP.[12] We support the generation of incremental credits through co-located or on-site renewable electricity generation, smart charging, and utility renewable electricity products. Our preference is for Ecology to remove all references to the purchase and retirement of RECs solely to demonstrate a lower CI than the statewide or utility-specific electricity mix. If Ecology retains the use of RECs, we strongly recommend a deliverability requirement in addition to the vintage requirement.[13] **To increase local benefits, we recommend WAC 173-424-DCIE(5)(c) be amended to**:

> RECs must be ~~generated from facilities located in the Western Electricity Coordinating Council~~ associated with electricity that is generated within a balancing authority area that includes a portion of the state of Washington, as recognized by the North American Electric Reliability Corporation, or that the electricity from the generating facility is delivered to one of those balancing authorities on a real-time basis without shaping, storage, or integration services; and

IV. Residential Electric Vehicle Charging (WAC 173-424-CCD(3))

We appreciate that directly metering all residential electric vehicle charging is not a requirement under the CFP rule but to reduce confusion and administrative burdens, we recommend removing metering requirements for electricity from this rulemaking.[14] We support WAC 173-424-CCD(3)(c) to allow for any necessary true-up and encourage Ecology to assess the

[8] WAC 173-424-DCIE(1)
[9] WAC 173-424-DCIE(3)
[10] RCW 19.405.070
[11] Washington Clean Fuels Standard – Carbon Intensity Model Peer Review, International Council on Clean Transportation (April 6, 2022), available at https://ecology.wa.gov/DOE/files/3f/3ff97fb5-9ba4-4507-8741-4be625e4e690.pdf
[12] WAC 173-424-DCIE(5)
[13] WAC 173-424-DCIE(5)(b)
[14] WAC 173-424-CCD(3)(a)

benefits and potential impacts of directly metered electric vehicle charging to inform any updates to the CFP rule.

V. Incremental Credits (WAC 173-424-CCD(4))

As previously stated, NWEC supports the generation of incremental credits through co-located or on-site renewable electricity generation, smart charging, and utility renewable electricity products. Our comments submitted December 22, 2021 outline our concerns regarding the use of RECs to generate incremental credits including that it could result in double counting and reduce the integrity of the Program. Taking this into account, we recommend removing all references to RECs used solely to demonstrate a lower CI under the CFP. If this option is retained, **we encourage Ecology to consider our recommendation to add a deliverability requirement.**

Additionally, this section appears to be the only section referencing an incremental aggregator. If Ecology chooses to establish a role for an incremental aggregator, **we recommend incorporating Oregon's approach to selecting an incremental aggregator.**[15]

VI. Advance Crediting (WAC 173-424-AD)

Ecology's proposal for advance crediting raises significant concerns about the integrity of the program if this approach is included in the final rule. Advanced credits should be reserved for: (1) projects that would not happen if it were not for receiving advanced credits; (2) projects that use fuels that are on a clear path to a CI of zero (electricity under Washington's Clean Energy Transformation Act); and, (3) are sponsored by a reliable public entity or an entity under contract with a public entity. Ecology's proposal only meets the third principle. **NWEC strongly recommends aligning with Oregon's approach to advance crediting, especially for the eligibility requirements and the cap on advance crediting.**[16]

VII. Generating and Calculating Credits for ZEV Fueling Infrastructure Pathways (WAC 173-424-GCCZFI)

NWEC has significant concerns that infrastructure credits will compromise the integrity of the CFP given that an infrastructure credit does not equal one metric ton of carbon dioxide equivalent less than the applicable standard adopted under RCW 70A.535.020. **We recommend removing WAC 173-424-GCCZFI in its entirety.** If Ecology chooses to move forward with infrastructure credits, we request Ecology assess the gap created by the infrastructure credits to ensure the program is resulting in real and verifiable CI reductions as well as review projects to evaluate the potential impacts to overburdened communities and create a process to address those impacts if they are identified.

VIII. Fixed Guideway Systems

[15] OAR 340-253-0330(11)(c)
[16] OAR 340-253-1100

We do not believe that fixed guideway systems built before or after a certain date should be treated differently under the Program. We are not familiar with other systems or fuels that are treated differently based on when they are placed in service. **We recommend allowing fixed guideway systems to generate the full number of credits they are eligible for regardless of when they are placed in service.**

IX. Book-and-Claim Accounting for Biomethane

As stated in our comments submitted December 22, 2021, we encourage Ecology to explore whether additional geographic requirements could provide local benefits while assessing any inadvertent impacts. It does not appear as though Ecology has incorporated any geographic requirements for book-and-claim accounting for biomethane. NWEC is concerned that adopting this approach in Washington could result in superficial CI reduction claims and no local benefits. **When book-and-claim accounting for biomethane is used to lower the CI of natural gas as a transportation fuel, we encourage Ecology to adopt additional requirements so the biomethane is delivered to and used in Washington.**

X. Conclusion

We want to reiterate our support for a carbon intensity trajectory that would require a 20% reduction in carbon intensity of fuels be achieved by the earliest date allowed in the law—2034. NWEC appreciates Ecology's work to establish Washington's CFP and we look forward to providing feedback on the CR-102.

Thank you for your consideration of the NW Energy Coalition's comments.

Respectfully submitted,

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