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Rachel Assink
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

**RE: 3Degrees comments on Rulemaking - Informal Public Comment Period for Chapter 173-424 WAC, Washington Clean Fuels Program**

Dear Rachel Assink,

3Degrees Group, Inc. ("3Degrees") appreciates this opportunity to submit comments to the Department of Ecology ("Ecology") on the forthcoming Clean Fuels Program ("CFP" or the "Program") rule.

We offer the following comments in response to the stakeholder meetings held between October 2021 and April 2022.

## Streamline Registration (WAC 173-424-REG) and Recordkeeping (WAC 173-424-RK)

3Degrees recommends that Ecology only require information specifically about the applicant entity for initial registration in Washington's Fuels Reporting System under WAC 173-424-REG(1)(b)), and move the information requirements related to fuel supply equipment, specific fuels that will be reported, and other details of dispensing facilities, as currently outlined in WAC 173-424-REG(1)(b)(iii)-(vi), to Section WAC 173-424-REG(1)(h) Registration of fueling supply equipment (FSE). As written, the rules could be interpreted to require that an entity must update its registration in the Program in order to make any change to the separate FSE registration.

3Degrees also recommends that Ecology revise WAC 173-424-RK(9) to allow entities to use monitoring plans for compliance with the Oregon Clean Fuels Program, in addition to those from California's Low Carbon Fuel Standard ("LCFS") program, for compliance with the Washington CFP.

## Define multi-family charging and classify as "non-residential"

3Degrees supports Ecology adopting Oregon's treatment of multi-family housing, defined as a structure that provides four or more living units and where the individual parking spaces and the charging equipment itself are not deeded or privately owned or by a single resident, and which classifies vehicle charging on these sites as non-residential. Where these criteria are met, it is challenging to show a tie between the charging station and vehicle owner and therefore is most appropriately treated as non-residential charging.

## Comments on Electric Forklifts ("eForklifts")

3Degrees supports Ecology's revision of WAC 173-424-220(5)(a) to designate the charging equipment owner as the eligible credit generator for eForklifts. This approach reduces the complexity of reporting and credit generation as there tend to be fewer chargers than eForklifts. Chargers are also fixed in place and provide a more stable source of data for credit generation.

In terms of registering eForklifts (WAC 173-424-REG(1)(h)(iii)), 3Degrees recommends that Ecology clarify if the FSE is the *facility* or the *location*. As there may be multiple facilities where electricity is dispensed at a specific location, it is not clear if this constitutes multiple FSEs. This confusion has led to delays in reporting in other states due to additional back-and-forth between Ecology staff and applicants. For similar reasons, 3Degrees recommends defining "facility" to clarify when multiple chargers constitute a single FSE or multiple FSEs that must be reported separately.

We recommend that Ecology align with California and Oregon's processes for calculating electricity use in eForklifts (SRR(3)). California and Oregon have established a methodology that incorporates measurements, industry standards, and ratings of charging equipment in order to reasonably estimate electricity consumption by forklifts. There is also an inconsistency in the proposed rule where the forklift breaking point is listed as 2023 under CCD(2) and is listed as 2015 under SSR(3)(f).

## Align Designated Reporting Entity ("DRE") Opportunity

### *Enable DRE Opportunity for All Program Participants*

3Degrees requests that Ecology clarify and align details around designated reporting entities across credit generation opportunities. For each credit generation opportunity, the first fuel reporting entity should have the ability to designate fuel reporting status to a DRE (also referred to as "designated aggregator"). The DRE should then inherit the priority and any other preferential treatment of the designator.

The entity with the first right to credits is intended to align with that entity which is closest to the decision-making related to supplying low-carbon transportation fuels. Allowing eligible credit generators to designate an aggregator enables this entity to benefit from the Program even if they do not have the resources to manage Program participation themselves or might not otherwise be able to participate directly. Designating reporting status is particularly beneficial for smaller entities, including entities providing smaller volumes of credit-generating fuels.

To implement this change, for each credit generation opportunity listed in the rule, where it lists the entity eligible to generate credits, Ecology should also include "or its designee". For example, under WAC 173-424-220 (4):

> *Fixed Guideway Systems*
>
> *For electricity used to power to fixed guideway vehicles such as light rail systems, streetcars, aerial tram, or transit buses,*
>
> *(a) The transit agency operating the system **or its designee** is eligible to generate the credits for the electricity used to propel the system.*

The above language, “or its designee”, should also be added to each of the entities listed as eligible to generate incremental credits from metered residential EV charging under WAC 173-424-220 (7)(b)(iii), as well as the entities eligible to submit an EER-adjusted CI application (WAC 173-424-EERCI).

Additionally, we recommend that Ecology allow a designated reporting entity to submit applications for infrastructure crediting (GCCZFI). Related to the California LCFS program, 3Degrees has observed issues where DCFC owners have experienced challenges participating in the program due to the inability to designate a reporting entity. Without this option, the owner of non-residential charging equipment would be able to designate a third-party to generate credits if the equipment is generating credits under the non-residential EV charging provisions, but not to generate credits under the Fast Charging Infrastructure (“FCI”) provisions of the regulation (WAC 173-424-GCCZFI). This dynamic means that a DCFC owner generating FCI credits cannot benefit from a designated reporting entity to support credit generation for EV charging nor with lowering the carbon intensity of that electricity. A DCFC owner choosing to use a 0-CI pathway for EV charging would need to additionally manage an Alternative Fuel Portal account, a WREGIS account, and the application for the 0-CI pathway, as well as quarterly REC procurement and retirement in accordance with Program rules and regulations. This disadvantages DCFC owners and discourages full participation in the program, particularly for smaller or earlier-stage companies.

### *Standardize Requirements Regarding DRE by Referencing a Single Section*

We recommend that Ecology standardize the requirements around how an entity designates authority to a designated reporting entity by referencing a single section within the rule that lists the requirements for designating reporting status. Some of this information is currently included as an option (b) for several of the entities listed under WAC 173-424-220 as well as under WAC 173-424-150 (3)(c).

Regarding the process for designating fuel reporting status outlined in WAC 173-424-150(3)(c):

- Under (i), the proposed rule allows DRE designation to take effect at the start of the next full calendar quarter after Ecology receives the Aggregator Designation Form. 3Degrees requests that Ecology align its rules with California and Oregon by allowing the DRE to generate credits in the quarter the application is submitted as long as all registration occurs within the quarter. For example, if designation notice is provided to Ecology in Q2 with sufficient time to register fuel supply equipment in the same quarter, designation takes effect in Q2 and the DRE can report to generate credits for the designator's Q1 fueling.

- Under (iv), the proposed rule requires that an aggregator notify Ecology when a credit generator or regulated party has withdrawn designation of the aggregator. 3Degrees recommends Ecology allow the designator to provide notice to Ecology to indicate that it has withdrawn its aggregator designation. As written, there could be issues if the original fuel reporting entity chooses to assign a new designee to report on its behalf but is unable to get the previous DRE to submit the required documentation to Ecology.
- We recommend that Ecology make clear that the calendar quarter in which a new DRE is reported to Ecology can be the same quarter that a previous DRE is withdrawn. The goal of this language is to ensure that, in the event the DRE changes, reporting and credit generation is uninterrupted.

## Clarify Incremental Credits Opportunity for EV Charging

3Degrees supports Ecology's proposal to create a preferential order for entity eligibility to generate incremental credits. We believe a few additional changes are needed to fully clarify preferential treatment.

Under WAC 173-424-220(7)(b), the rules separate out metered and non-metered charging, but do not directly address priority between metered and non-metered charging. If the preferential order in the final rule otherwise remains the same as in the proposed rule, 3Degrees understands the preferential order for generating incremental credits from residential EV charging overall would be: (1) utilities supplying electricity with FSE ID and metered data; (2) manufacturers of EV with FSE ID; (3) any other entities with FSE ID and metered data; (4) electric utilities eligible to generate incremental credits for supplying low-CI electricity to the non-metered EVs in their service territory.

SRR(3)(c)(ii)(B) should also be revised to align with WAC 173-424-220(7)(b) to mirror the preferential order for entities eligible to generate incremental credits rather than nullifying credits if multiple claims are made on credit generation.

## Support the Book-and-Claim Accounting Approach to Verify Electricity Usage from Off-site Renewable Electricity Generators

3Degrees is supportive of the proposal to allow matching of off-site renewable electricity resources with EV charging via a book-and-claim accounting methodology. Renewable energy credits ("RECs") are recognized across the country and within other Washington policies as the mechanism used to track, transact, and consume renewable electricity on the shared North American grid.

To reflect that there are multiple potential credit generators for EVs and both on-site and off-site options for claiming lower-CI electricity, we recommend revising WAC-173-424-CI (3)(c)(ii). For example:

> (c) For electricity ~~suppliers~~ as a transportation fuel:
>
> (ii) Credit generators or aggregators may use a carbon intensity different from the ~~utility-specific~~ averages under (c)(i) if the party sources lower-CI electricity consistent with the options under WAC 173-424-DCIE (4) through (7) ~~generates lower carbon electricity at the same location as it is dispensed into a motor vehicle consistent with the conditions of the approved fuel pathway code under WAC 173-424-DCIE(3).~~

Ecology should also address whether a utility must request a utility-specific CI score, and whether the utility is allowed to choose if it will use a utility-specific CI or a statewide electricity average.

### *REC Eligibility Requirements*

We are generally supportive of the eligibility rules Ecology has proposed for off-site renewable electricity used as a transportation fuel. However, 3Degrees is concerned with the requirement that generators must be placed into service after 2023. We understand and support the objective of supporting incremental renewable energy generation to meet EV charging under the Program, however a 2024 or later COD will severely limit the opportunity for electricity used as a transportation fuel under the Program to be fully decarbonized for the first several years of the Program. We encourage Ecology to consider alternatives for the initial years of the Program that still meet the objective of supporting incremental renewable energy generation while also enabling zero-CI electricity sourcing for charging. For example, Ecology might consider initiating the Program with a 5-year rolling COD requirement until 2029 and then hold the COD requirement at 2024, or developing unique eligibility requirements for pre-2024 projects that could be eligible in the early years of the Program.

Regarding low- or zero-carbon electricity, we believe that SRR(3)(a) should be revised slightly to state:

> *Registered parties must submit documentation that qualifying RECs were retired in WREGIS **and** submit proof of completion of final verification from Green-e **or** submit documentation that EVs are covered by a utility RE product.*

### *Green-e® Requirements for Biogas-derived Electricity*

3Degrees supports Ecology's proposal to have slightly different eligibility requirements for biogas-derived electricity projects, such as a revised in-service date requirement. However, we are concerned with Ecology's proposal to require Green-e® certification for biogas-derived electricity projects due to the potential for Green-e® to disqualify many of these facilities from certification.[1] Center for Resource Solutions (CRS) is currently in the middle of a stakeholder consultation process for the five-year review of its *Green-e® Renewable Energy Standard for*

[1] See proposed revisions on pages 4, 7, and 8: https://www.green-e.org/docs/energy/2021/Green-e%20Energy%20Std%20US%20Can%20v4%20Dec%202021.pdf

*Canada and the United States*. One proposal Green-e® has put forward is to restrict waste from CAFO as an eligible feedstock.

Given the uncertain eligibility of these facilities under the Green-e® program, 3Degrees recommends that Ecology not move forward with requiring Green-e® certification for biogas-derived electricity until Green-e® has completed its standard revision process later this summer. Tying biogas-derived electricity eligibility to the Green-e® standard while the eligibility of these projects is under consideration will create uncertainty in the CFP market. This uncertainty will stall investments in these projects until Green-e® has finalized its rule updates. If Green-e® ultimately moves forward with removing these projects from eligibility, Ecology should not require Green-e® certification for biogas-derived electricity projects. Requiring Green-e® certification would result in a CFP that disincentivizes biogas projects from continuing to generate electricity but rewards the same projects for delivering biomethane to vehicles.

The CFP should support both biogas-derived electricity and biomethane used as a transportation fuel, not favor one end-use over the other when both are seen as having climate benefits. It is true that biomethane is an important climate-friendly solution for hard-to-electrify vehicle applications, such as large trucks and buses, but as a fuel for passenger vehicles, biogas may have the greatest greenhouse gas reduction potential when used to power electric vehicles (see World Resources Institute's The Production and Use of Renewable Natural Gas as a Climate Strategy in the United States, p.15, Box 2). Washington's CFP should create an equal playing field for both fuel types, allowing technology and markets to decide the most appropriate use for waste-derived biogas.

### Support Infrastructure Crediting (WAC 173-424-GCCZFI)

3Degrees is supportive of Ecology including an infrastructure crediting opportunity at the start of the Program. The inclusion of this provision will support equitable infrastructure deployment across the state and enable Washington to meet its long-term climate goals.

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3Degrees appreciates this opportunity to provide feedback and we look forward to continuing to work with Ecology on the development of the CFP. Please reach out with any questions or for further discussion.

Sincerely,

/s/ Maya Kelty

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