April 25, 2022

Rachel Assink
Rulemaking Lead
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

SUBMITTED ELECTRONICALLY AT: www.aq.ecology.commentinput.com/?id=DpgZ3

Re: Chapter 173-424 WAC Clean Fuels Program ("CFP") Draft Rule Language and Response to Comments of Multiple Organizations Concerning Electric Vehicle Credit Generation Provisions

Rivian Automotive, LLC, ("Rivian") appreciates this opportunity to provide additional written comments before the conclusion of the informal comment period for the CFP's development. Below, Rivian offers perspectives on certain provisions in the draft rule language including those governing the determination of electricity carbon intensity ("CI"), as well as responses to specific comments filed on March 14, 2022, by multiple organizations regarding electric vehicle ("EV") credit generation. We wish to respectfully address the issues raised as part of our ongoing advocacy for an approach that provides automakers with an opportunity to participate in residential EV charging credit generation. We are disappointed that the draft rule language most recently shared by the Department of Ecology ("ECY") does not currently allow for such participation and believe finalizing the currently proposed language will undermine the rule's effectiveness.

Rivian Strongly Supports Washington's CFP as Part of a Comprehensive Approach to Decarbonizing Transportation

Founded in 2009, Rivian is an independent U.S. company with over 12,000 employees across the globe and a mission to Keep the World Adventurous Forever. Rivian's focus is the design, development, manufacture, and distribution of all-electric adventure vehicles, specifically pickups, sport utility vehicles, and commercial vans. Key to the success of our mission, these vehicles will displace some of the most polluting vehicles on the road today.

Clean fuels policies like Washington's CFP can create powerful incentives to support and accelerate the adoption of EVs and investment in EV charging infrastructure, while helping to drive down the CI of the electricity used to charge EVs. With thoughtful design, the CFP promises to complement Washington's existing policies aimed at decarbonizing transportation, including the Advanced Clean Cars and Advanced Clean Trucks regulations. Adopting a suite of mutually reinforcing policies that each work to electrify the transportation sector in different but complementary ways is crucial if the state wishes to accelerate its progress and achieve its climate and air quality goals—including the newly established statewide target of 100 percent ZEV sales by 2030. In the context of such critical but demanding goals, Washington should not leave any options on the table.

Rivian has previously commented in support of the CFP rulemaking and, specifically, a version of Option 3 for credit generation from residential EV charging in a joint letter submitted to ECY on March 9, 2022. We continue to support the most stringent possible CFP, which would deliver the greatest benefits to the state's EV market, the climate, and air quality if it includes a pathway for automakers to earn a share of residential credits.

With Respect to Base Residential EV Credit Generation, Option 3 Remains the Most Beneficial Alternative Under Consideration

Option 3 accomplishes several important objectives that should be at the core of the CFP's provisions governing base residential EV charging. First, by providing a pathway for automaker participation alongside utilities, it facilitates the direct involvement of multiple key actors involved in the life cycle of electricity as a transportation fuel. Second, the focus on leveraging empirical charging data would greatly improve the accuracy and environmental integrity of the CFP while ensuring comprehensive coverage of residential charging events. Perhaps most importantly, it would create a direct linkage between the CFP and the manufacturers and sellers of EVs, directly incentivizing additional investment in the development and production of this crucial emissions reduction technology. This is one reason we believe Option 3 has the potential to accelerate and deepen emissions reductions under the CFP versus other alternatives proposed.

Consider that under the approach now in draft rule language, the market signal sent by residential charging credits will be attenuated because it must first filter through intermediaries before potentially reaching and rewarding EV market participants. And to the extent that credit revenue proceeds claimed by utilities are steered toward projects such as grid investments, which while important are largely invisible to the EV-buying public, the pro-electrification market signal the CFP is intended to provide could diminish yet further. Option 3 remedies these potential issues by diversifying the pool of residential credit generators to include direct participants in the EV market, and thus also diversifies the potential projects and investments that could be supported by the credit revenue proceeds.

Recently Expressed Concerns Regarding Option 3 are Misplaced

In a letter dated March 14, 2022, several commenters expressed various concerns regarding Option 3. These concerns are misplaced, and certain arguments made by the commenters misapprehend key facts. We respectfully respond to these concerns and arguments below.

- **Contrary to the commenters' assertion, the non-residential infrastructure credit pathway is an inappropriate one for meeting the statutory requirement to provide automakers with a mechanism for participation in the CFP.** Commenters argued that draft rule language allowing for the owner or service provider of non-residential EV charging equipment to earn credits satisfies the requirements of statute to provide EV manufacturers with a mechanism to "participate in the clean fuels program," and therefore obviates the need to consider additional pathways.[1] This is unpersuasive. As commenters note, just "some"—not all—EV makers produce and own such

[1] RCW 70A.535.030(4).

equipment. While those manufacturers might be positioned to capitalize on the non-residential charging credit pathway, others would not be. Moreover, it would be unreasonable to expect a vehicle manufacturer to expand into an entirely different product offering altogether as their means of participation in the CFP. Oddly, commenters seem not to consider the possibility that if the non-residential credit pathway is suitable for automakers, it would surely be even more so for utilities who are broadly in the business of EV infrastructure development. In this context, arguments against an automaker role in residential EV crediting yet in support of allowing utilities to claim 100 percent of residential credits are particularly difficult to reconcile.

- **While utilities are statutorily required to reinvest credit revenue in transportation electrification ("TE") projects, there are important benefits in also providing entities other than utilities with an opportunity to participate in earning base residential credits.** Commenters argue that selecting Option 1 and allowing utilities to claim 100 percent of base residential EV charging credits is appropriate because utilities are required to reinvest credit revenue in TE. While statute does explicitly require utilities to invest a portion of their credit revenue in certain ways supportive of TE, it is important to note that the law as written appears to leave 25 percent of utility credit revenue unencumbered by these requirements.[2] More importantly, one of the lessons learned from existing clean fuels standards is that utilities, while they have many strengths and play a key role in the EV transition, can be inefficient intermediaries for channeling certain TE investments because of their highly regulated operations. For example, California's Clean Fuel Reward, an EV purchase rebate funded by base residential EV charging credit revenue collected by utilities, took several years to implement. In Washington, hypothetical future investments in grid infrastructure to support TE—allowable under statute—might deliver no meaningful market signal to consumers at all. It makes sense, therefore, to allow multiple entities to have a role in generating credits and investing the proceeds in ways that best reflect their core competencies and address various TE needs. As we have previously articulated, we see utilities as important partners in TE and do not believe that they should have no role as base residential credit generators. But we argue for automaker and aggregator participation in the pathway as well in part to leverage the unique strengths of all these parties. While utilities are well positioned to make impactful investments in grid infrastructure, for example, automakers are best placed to invest in vehicle technology and growing the consumer-facing market, and a non-profit aggregator seems most suitable as the lead investor in projects targeting disadvantaged communities.
- **While the Legislature did not specify that EV manufacturers must make certain commitments regarding revenue reinvestment, ECY could explore establishing certain expectations and obligations in this regard.** Commenters expressed concern that EV makers do not bear any legal requirements regarding credit revenue investments. It is important to reiterate that one of the key strengths of a clean fuels standard is that it leverages the power of market-based incentive frameworks to drive private sector investments. EV makers that earn credits from base residential EV charging will be strongly incentivized to produce and sell an increasing number of EVs that are well used and thus charged often—generating more credits—with direct benefits for air quality, the climate, and the state's EV adoption goals. As an all-EV manufacturer with a companion charging network under development, Rivian would naturally invest any credit proceeds in ways that build the EV market. Nonetheless, Rivian is prepared to commit to some form of reporting

[2] RCW 70A.535.080(1)(a), 70A.535.080(2)(a).

that itemizes credit proceeds and describes their use—much as automakers already do when participating in California's incremental credit pathway.[3] We would welcome additional dialogue with ECY and stakeholders to explore this further.

- **Washington's Advanced Clean Cars program, also known as the "ZEV mandate," is intended to achieve different outcomes than the CFP in service of the state's TE goals. The two policies are best understood as complements and are not substitutes or "overlapping" regulations.** As an argument against Option 3, commenters claimed that the ZEV mandate already obligates EV sales in Washington and that any additional regulatory inducements are unnecessary. In fact, commenters asserted that the CFP and ZEV mandate constitute "overlapping regulations." This misapprehends the distinct and complementary goals of the two policies. While the ZEV mandate requires a minimum percentage of EVs to be delivered for sale in Washington, the CFP incentivizes the *use* of those vehicles. As described above, the CFP's unique contribution to the state's overall approach to reducing transportation emissions is in rewarding the use of low-carbon fuels. The more a low-carbon fuel is used (in the case of an EV, the more it is driven and charged), the greater the regulatory benefit. Taken together, the ZEV mandate and CFP present automakers with a clear set of complementary obligations and incentives: produce and sell highly utilized EVs. Far from being overlapping, these policies are mutually reinforcing and ECY should seek to leverage both to their fullest potential.

For Additional Assurance, Consider Plans for an Evaluation of Base Residential EV Credit Generation under Option 3

As we describe above and in our original March 9, 2022, submission, Option 3 promises significant and important benefits for the CFP and Washington's efforts to electrify the transportation sector. Washington has a unique opportunity to lead the country with this reformed approach to base residential EV credit generation.

Acknowledging that Washington would be the first to implement this approach, we recommend that ECY build in plans for an evaluation of this aspect of the program to take place at some interval after the first full year of program implementation. The authorizing statute already prescribes an annual report on CFP status and the prior year's program activities, beginning May 1, 2025.[4] An assessment of the base residential EV credit pathway could be incorporated into an iteration of this report. This assessment could provide all stakeholders with key information regarding the implementation of a version of Option 3, including the scope of data provision by automakers and credit revenue generated and invested by all entities. We believe such an assessment would provide additional assurances to ECY and stakeholders that Option 3 is delivering meaningful benefits and supporting program goals.

---

[3] California Air Resources Board, *Low Carbon Fuel Standard (LCFS) Guidance 20-03: Electricity Credit Proceeds Spending Requirements* (updated April 2021), available at www.arb.ca.gov/sites/default/files/classic/fuels/lcfs/guidance/lcfsguidance_20-03_ADA.pdf.

[4] RCW 70A.535.090.

Rivian Generally Supports the Proposed Language Regarding Determination of Electricity CI but Recommends Additional Considerations

Broadly, ECY's draft rule language governing CI determination for electricity appears directionally appropriate and well-conceived to drive emissions reductions and support the use of low-CI electricity within the CFP. For offsite renewable electricity, Rivian specifically applauds provisions affirmatively requiring Green-e® Program certification and REC generation anywhere in the Western Electricity Coordinating Council (WECC) territory. To drive system-wide decarbonization we recommend that ECY not require out-of-state resources to transmit directly into the state to qualify. Broadening REC generation eligibility to the entire WECC footprint will incentivize build-out where it can have a greater avoided emissions impact and it will protect against potentially unintended upward cost pressure that might result from limiting eligibility to only in-state resources.

However, Rivian has identified two specific issues that merit further consideration.

- For onsite renewables, we recommend clarifying the language in Section 4(d) to allow applicants to utilize RECs generated onsite when not separately metering for direct use of onsite renewables dispensed through EV chargers. This clarification would be consistent with the offsite renewable electricity methodology in Section (5). Rivian is concerned that Section 4 as currently written could work against onsite renewable generation by seemingly preventing entities from utilizing the low-CI electricity generated onsite unless the chargers are also dispensing while the onsite facility is producing electricity. This would fail to account for clean electricity fed back to the grid when the chargers are not dispensing electricity. Entities should be permitted to match total RECs generated from an onsite solution.
- For offsite renewables, the requirement under Section 5(b) that RECs must be generated by a generator placed into service after 2023 poses risks. While this provision appears well intended, it would artificially constrain supply and could therefore inflate REC prices sufficiently to undermine participation, at least in the short term. ECY should consider allowing some existing projects placed into service prior to 2023 to be eligible, such as RECs generated from new long-term offtake agreements, as well as those from repowered facilities. This would strike a balance between qualifying RECs supporting the development of impactful projects while protecting against the unintended consequences of limiting project eligibility.

Conclusion

Rivian appreciates this final opportunity to engage with ECY during the informal comment period. We are strongly supportive of the CFP and applaud Washington for taking steps to become just the third state in the country to implement this policy. As we have described above, we believe the concerns raised by commenters regarding Option 3 are misplaced and we continue to strongly support this option for its clear benefits for the CFP and Washington. We urge ECY to look again at the benefits of this approach. We acknowledge that this would be novel and therefore suggest ECY consider planning for an evaluation of the base residential EV charging credit provisions to allow stakeholders an opportunity to assess the success of Option 3 with the benefit of implementation experience. We also generally support draft provisions governing the determination of electricity CI but encourage a reconsideration of certain aspects of that language.

Please contact me with any questions. Rivian thanks ECY again for its hard work and thoughtfulness in developing this regulation. We look forward to continued discussion with you and all stakeholders to craft a maximally beneficial rule.

Sincerely,

Tom Van Heeke
Senior Environmental Policy Advisor
Rivian Automotive, LLC
tvanheeke@rivian.com | 641-888-0035