Bonneville Power Administration

BPA comments for informal comment period on draft rules for the Climate Commitment Act, Chapter 173-446 WAC

Department of Energy

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January 26, 2022

Filed Via Web Portal: https://aq.ecology.commentinput.com/?id=mgir9

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Re: Informal Comment Period on Climate Commitment Act Program, Chapter 173-446 WAC

The Bonneville Power Administration (BPA) appreciates the opportunity to provide comments on the Washington Department of Ecology's (Ecology) draft program rules to implement the cap-and-invest program created under the Climate Commitment Act (CCA). BPA provides low-carbon firm power to 63 consumer-owned utilities in Washington, and sells power to other public utilities and investor-owned utilities in Washington as well. BPA also sells power into California (among other states) and is a First Jurisdictional Deliverer for sales into California's cap-and-trade program. These program rules will have implications for BPA arising from BPA and its Washington customers' compliance with Washington's cap-and-invest program.

BPA is focusing its comments on a few areas where the draft language related to BPA is not consistent with the CCA, and some areas where there is an opportunity for streamlined procedures and/or consistency with California's cap-and-trade program.

1) **Draft language regarding who is the First Jurisdictional Deliverer (FJD) for electricity imports from a federal power marketing administration is not consistent with the CCA**

WAC 173-446-040(3)(e)(ii) states that a utility purchasing power from a federal power marketing administration (PMA) is the electricity importer and FJD. This is inconsistent with the CCA's definition of "electricity importer" which provides that a PMA may voluntarily elect to comply with the CCA and be the electricity importer and FJD. BPA has not yet determined if it will be the FJD under Washington's cap-and-invest program.

Accordingly, BPA asks Ecology to delete 173-446-040(3)(e)(ii) in its entirety as it seems unnecessary to further expand upon the definition of "electricity importer" from the CCA at this time. If Ecology would like to retain language under this section around what entity (BPA or the utility) is the electricity reporter, it should refer to the definition of 'electricity importer' in the CCA.

2) Rule language should explicitly acknowledge that utilities can transfer allowances to BPA, which is provided for in the CCA

BPA asks Ecology to include in WAC 173-446-230 the language from the CCA regarding utilities' ability to transfer allowances to BPA. Section 14 of the CCA, which addresses the allocation of no cost allowances to utilities, states: "(6) [Ecology] shall allow for allowances to be transferred between a power marketing administration and electric utilities and used for direct compliance." This language needs to be included in the program rules as well. As written, the draft language in WAC 173-446-230(5) appears to preclude this statutory ability to transfer allowances because it states that no-cost allowances may only be "consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both." Accordingly, BPA requests Ecology include in WAC 173-446-230 the following language:

> *New* (6) In addition to (5), allowances allocated at no cost to utilities can be transferred between a utility's holding account and a power marketing administration's holding account to be used by the power marketing administration for compliance with the program.

Related to this, WAC 173-446-400 (6) should acknowledge that it does not apply to transfers under the above suggested WAC 173-446-230 (6) between a utility and a PMA under a power sales contract since the PMA may in fact be holding compliance instruments where the utility still retains an interest in said compliance instruments. Accordingly, BPA requests Ecology add the italicized language to WAC 173-446-400(6):

> *Amended* (6) A covered entity or opt-in entity may only hold compliance instruments for its own use and may not hold compliance instruments on behalf of another party having an interest in or control of the compliance instruments. *This does not apply to a federal power marketing administration, which may hold compliance instruments on behalf of another party.*

3) The rules should provide a method to efficiently transfer allowances between utilities and a PMA

To support the transfers of allowances between a utility and BPA in comment 2) above, BPA suggests the program rules include an appropriate way to streamline transfers between BPA and the consumer-owned utilities in the state. The process proposed in WAC 173-446-400 through 173-446-430 is manual and prone to errors. In contrast, the California Air Resource Board (CARB)'s cap-and-trade program rules provide a means for a more automated transfer between a PMA and a public utility purchasing imported power from the PMA under a power sales contract.[1] This rule is supported by additional guidance and forms.[2]

BPA believes an approach similar to CARB's could appropriately be used for Washington's cap-and-invest program as well. One caveat would be that if allowances are transferred from a utility to a PMA, the utility should be allowed to transfer them to the holding account of the PMA rather than directly to the compliance account. Based on BPA's past experiences with this under CARB's program, BPA foresees there may be errors in transferring the correct volume and/or vintage of allowances if not automated and if BPA and utilities are not given the flexibility to have the allowances transferred into BPA's holding account rather than directly to its compliance account.

4) Clarification is needed on the draft language for allocating no cost allowances to a PMA for an EITE

WAC 173-446-230 (3), which is based on section 14(5) of the CCA, provides for a circumstance where allowances may be allocated at no cost to a utility or PMA to cover forecasted emissions for electricity service to an EITE. BPA's expectation is that, if BPA agrees to act as an FJD under the program and is directly serving an EITE, then Ecology would allocate allowances at no cost to BPA in an amount equal to the forecasted emissions associated with electricity sales to the EITE. However, the draft language adds an additional stipulation that is not in the CCA by stating the allowances will be provided "only if the methods in [the voluntary renewable electricity section] have not already accomplished this."

[1] See CARB's cap and trade program rules §95892(b)(2):

> When a publicly owned electric utility or electrical cooperative is eligible for a direct allowance allocation, it shall inform the Executive Officer of the allowance amounts to be placed into the compliance account of an electrical generating facility, the compliance account of an electric power entity, and the limited use holding account of the publicly owned electric utility or electrical cooperative. The Executive Officer shall place the amount of allowances not destined for the publicly owned electric utility or electrical cooperative's own limited use holding account into the publicly owned electric utility or electrical cooperative's annual allocation holding account, and these allowances shall be transferred by the Executive Officer into the requested compliance accounts pursuant to section 95831(a)(6). Allowances may be placed into the compliance account of an electrical generating facility or electric power entity only if the electrical generating facility or electric power entity is: (B) Operated by a federal power marketing administration with which the publicly owned utility or electrical cooperative has an agreement to purchase imported electricity or a power purchase agreement, including a custom product contract.

[2] See Cap-and-Trade Program Guidance and Forms | California Air Resources Board > Allowance Allocation > NDU and NGS Allowance Distribution Forms > Instructions for POU or COOP Allocation Distribution and Recipient Confirmation Forms and related forms.

BPA requests additional information on Ecology's reason for including this additional stipulation that is not included in the CCA and/or requests Ecology delete the stipulation.

5) Additional context is needed on how Energy Imbalance Market (EIM) imports will be treated under Washington's cap-and-trade program

The definitions in the draft rule refer to the "electricity importer" as defined in Ecology's GHG Reporting Rules. As BPA stated in its November 16 comments to Ecology, the proposed rule language in the GHG Reporting Rules (WAC 173-441) around who the "electricity importer" is for the EIM is confusing and problematic. That proposed rule language does not identify a single entity who is the covered entity for EIM imports, rather referring to multiple entities that could be the "EIM Purchaser" and thus the covered entity under the CCA. Without seeing a new version of the GHG Reporting rules, BPA is unable to assess what the implications may be on these cap-and-invest program rules.

Regardless, BPA reiterates its suggestion from its November 16 comments that a sensible interim solution for accounting for GHG emissions associated with EIM imports would be for Ecology to either administratively retire allowances to cover these emissions or defer compliance under the CCA until a permanent solution can be determined.

6) BPA will need exceptions to registration and attestation requirements to accommodate federal requirements

BPA notes the following sections contain provisions that Ecology will need to provide exceptions to in order to accommodate BPA if it is a registered entity and FJD under the program. In all of these areas, the same language is in CARB's cap-and-trade program rules and CARB has provided accommodations for BPA and other federal entities under administrative exemptions.

WAC 173-446-050, WAC 173-446-053, WAC 173-446-055. If BPA opts to be a FJD under the program, the registration requirements that apply to others will have to be adjusted for BPA. For example, WAC 173-446-053 "Electric Utilities Registration" and WAC 173-446-055 "General market participants registration" envision that the entity registering will provide corporate-style information, which does not apply to BPA.

WAC 173-446-105 Disclosure of corporate associations – Indicia of corporate association. BPA is a U.S. Government agency, not a corporation. Therefore, by definition, BPA has no corporate associations and this section is inapplicable to BPA.

WAC 173-446-130 Designation and certification of account representatives. If BPA is a registered entity, then BPA will need to receive an exemption for this section because the information requested is Personally Identifiable Information (PII) that violates the Federal Privacy Act. BPA cannot ask its employees to provide this information. WAC 173-446-130 appears to be identical to requirements in CARB's program. Because of the Federal Privacy Act, BPA worked with CARB to arrange a different system in lieu of these requirements. BPA provides CARB with a declaration where its employees attest to their identity and acknowledge that that they are subject to Federal laws that would subject them to penalties if they committed fraud or otherwise acted improperly. BPA anticipates it can do the same with Washington by providing a declaration that will meet Washington's needs.

WAC 173-446-430(1)(g). Due to federal sovereign immunity, BPA will be unable to consent to the sentence of this section that states: "I consent to the jurisdiction of Washington and its courts for purposes of enforcement of the laws, rules and regulations pertaining to WAC 173-446 . . . ." BPA representatives will be able to comply with the rest of the attestation, but will not attest to that sentence. CARB requests a similar attestation and BPA treats it in a similar fashion.

7) BPA is not a consultant or advisor under WAC 173-446-056

BPA's reading of WAC 173-446-056 is that it does not apply to BPA. The intent of the section is geared toward those "providing any of the following *services* for *a party* registered in the [program]." WAC 173-446-056 (emphasis added). BPA does not meet that intent. First, BPA would not be paid or hired (see WAC 173-446-056 (2)(b)(ii) which envisions that there would be a contract for the hired consultant/advisor). Second, BPA is a government entity performing its statutory function; it is not being hired to provide "services." Finally, even if BPA performs functions akin to some of the acts described in WAC 173-446-056, BPA will be doing so on a region-wide basis rather than acting as a consultant or advisor for any particular party. WAC 173-446-056 is directed toward advisors providing services for "a party." See also WAC 173-446-055 (1) (c) which states that a consultant or advisor "must disclose to Ecology the parties for which the individual is providing consulting services." BPA does not fit this description because it would not be providing services specific to any particular party. CARB also has similar language and does not consider BPA to be a consultant or advisor.

8) Need for coordination among states

Finally, BPA believes greater coordination among states on these types of programs provides benefits to both state policymakers and covered entities, including increasing efficiency and

reducing friction in carbon markets and electricity markets, more easily enabling linkage of programs across jurisdictions, and ultimately most efficiently achieving the shared program goals of reduced GHG emissions. To that extent, BPA urges Ecology to consider where, even in the absence of linkage, there would be benefits of creating rules that are consistent with CARB's cap-and-trade program rules. A few key, but not necessarily all, areas where BPA believes consistency would be beneficial: 1) auction design basics, such as having the same price for the auction floor and ceiling and price containment reserve; 2) reciprocity across jurisdictions for emissions already covered under one program (i.e. electricity imported from California does not also incur a compliance obligation in Washington and vice versa); 3) consistent reporting and auditing timelines; and 4) consistent treatment of the special requirements of federal entities (see comments above). BPA encourages Ecology to carefully consider consistency and coordination with CARB in these areas.

BPA appreciates Ecology staff's efforts to develop these rules in a short time frame. Please feel free to contact me at 503.230.4358 or Liz Klumpp at 360.943.0157 if you have any questions on BPA's comments.

Thank you,

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