



December 1, 2021

***Filed Via Web Portal***

ATTN: Cooper Garbe  
Department of Ecology  
Air Quality Program  
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**RE: Rulemaking – Informal Comment Period on Climate Commitment Act Program, Chapter 173-446 WAC**

On November 8, 2021, the Department of Ecology (Ecology) held its first stakeholder workshop on new rulemaking Chapter 173-446 WAC (Climate Commitment Act Program), during which Ecology announced a solicitation for informal comments on the initial draft rules. The Public Generating Pool (PGP)—which represents eleven consumer-owned utilities that own and operate approximately 8,000 megawatts of generating resources in the state and purchase approximately 45 percent of Bonneville Power Administration’s preference power—appreciates the opportunity to comment.

PGP has reviewed the November 8 draft rules and requests clarification by Ecology on a number of points, namely:

- **Whether landfills and waste-to-energy facilities used by city or county solid waste management programs are included as covered entities as of the first compliance period beginning January 2023.** PGP’s reading of the Climate Commitment Act (CCA) is that waste-to-energy facilities used by city or county solid waste management programs become covered entities as of the second compliance period and landfills as of the third compliance period. However, draft WAC 173-446-030(1)(a)(i) and (ii) include landfills and waste-to-energy facilities under the first compliance period.
- **The purpose and intended scope of draft WAC 173-446-056 (Cap-and-Invest Consultants and Advisors).** Draft WAC 173-446-056(1) defines a “Cap-and-Invest Consultant or Advisor” as “an individual or party that is not an employee of a registered entity, but is providing any of the following services for a party registered in the Cap-and-Invest Program, regardless of if the Consultant or Advisor is acting in the capacity of an offset or emissions verifier. . . .” The listed services include item (1)(i), “Brokering in, **advising on, or assisting in any way** in carbon or GHG-related markets” [emphasis added]. PGP requests that Ecology provide more specificity as to

what it means by “advising on, or assisting in any way in carbon or GHG-related markets,” and that these activities be distinguished more clearly from “brokering in” carbon or GHG-related markets, which PGP agrees is an activity that lends itself to disclosure to Ecology. The plain language of this provision—which has no underlying statutory authorization in the text of the CCA—appears to be overly broad. As a trade association committed to helping its member utilities navigate regional GHG policy, PGP is concerned that this provision could be interpreted to mean that PGP would: (a) Be considered a Cap-and-Invest Consultant/Advisor generally; and (b) be required to register with Ecology as such for each of its ten Washington member utilities. PGP is also concerned that this provision impacts covered entities’ ability to retain legal counsel on issues pertaining to the Cap-and-Invest Program without being required to disclose such counsel to Ecology.

- **What types of relationships Ecology envisions being captured in draft WAC 173-446-105 (Disclosure of Corporate Associations – Indicia of Corporate Association), subsection (5)—pertaining to electric utilities.** This provision, which relates to potential corporate associations among electric utilities, in-state electric generating facilities, and electricity importers, is unclear and difficult to understand. PGP suggests that Ecology provide hypothetical examples of what this provision is intended to mean in practice.
- **Could Ecology also clarify in the CCA Program Rules process the timing relative to when electric power entities are required to begin reporting under the proposed changes to Ch. 173-441 WAC (GHG Reporting Rule) and when electric power entities are anticipated to be included as covered entities under the Cap-and-Invest Program.** In our comments submitted to Ecology on November 16, 2021, on the rulemaking to amend Ch. 173-441 WAC (GHG Reporting Rule), PGP requested additional clarity regarding the first year in which electric power entities are expected to submit their mandatory GHG accounting reports. During the Public Hearing on the draft rule held November 9, 2021, Ecology staff indicated that electric power entities will not be expected to submit their first report until 2023 for 2022 emissions data. PGP appreciated the clarification, as an initial reporting deadline in 2022 for 2021 emissions data would not be feasible, given the proposed timing of final rule adoption. However, PGP would appreciate confirmation in the CCA Program Rules process of when electric power entities will be considered “covered entities” for the purposes of both participating in allowance auctions and meeting compliance obligations, given that pre-program emissions data for electric power entities will not be available until after the CCA Program is presumed to begin in January 2023.

Sincerely,



Therese Hampton, Executive Director