1/26/2022

ATTN: Cooper Garbe
Rulemaking Lead, Policy and Planning Section
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

RE: Chapter 173-446 WAC – Climate Commitment Act Program Rulemaking

Below please find the informal public comments of Grays Harbor Energy, LLC ("GHE") regarding the Washington Department of Ecology's ("Ecology") proposed rule 173-446 of the Washington Administrative Code ("Proposed Rule") to implement the Climate Commitment Act ("CCA"). Grays Harbor Energy, LLC owns and operates the Grays Harbor Energy Center, a 662 MW natural gas fired combined cycle electric generating facility in Elma, Washington. GHE is an affiliate of Invenergy, North America's largest privately held clean energy developer.

GHE hereby expressly reserves the right to make additional comments regarding the Proposed Rule and does not waive or forfeit any arguments or claims against the Proposed Rule or the CCA due to their exclusion herein. GHE appreciates Ecology's openness and engagement thus far in the rulemaking, and respectfully makes recommendations to change or clarify the Proposed Rule in certain respects as described below. GHE looks forward to working with Ecology staff and others to implement the Proposed Rule as a covered entity with one of the, if not the single, largest compliance obligations of any covered entity.

Electric Utilities Should be Expressly Permitted to Use No-Cost Allowances to Transact With GHE

GHE is unique in that it is the only natural gas fired electric generation facility that is entirely owned by a non-electric utility in the state of Washington. Upon information and belief, and to our best knowledge, GHE is the only electric generating facility in the state that will not receive any no cost allowances under the Proposed Rule. GHE believes this is potentially discriminatory and could constitute single-entity legislation/rulemaking. To reduce and mitigate some of the impacts of such targeted legislation and rulemaking, GHE requests that Ecology clarify the Proposed Rule to ensure that covered electric utilities can use their no-cost allowances to purchase power from non-electric utility owned generation, such as GHE. While such use does not appear to be prohibited by language in the CCA or the Proposed Rule, Ecology should add language to the Proposed Rule to proactively establish that option.

There are several provisions of the CCA and the Proposed Rule which seem to contemplate such use. Regardless of who happens to own the electric generating facility, if that facility is used by an electric utility to serve its retail load, the electric utility is due no cost allowances by the CCA and the Proposed Rule. *See e.g.*, WAC 173-446-230(1)(a), (b). It would be unfair for the actual generating facility that serves the utility's load in such an instance to not qualify for no-cost allowances when the utility itself is due no-cost allowances for that same electricity. Ecology's presentations regarding the Proposed Rule have also recognized the inclusion of contracted power as part of an electric utility's no-cost allowances. ("Ecology will identify and catalog all contracted power;" "emissions footprint will depend on generation resources used to serve load…Forecasted retail electric load." December 16, 2021 presentation at slides 24, 40-41). In addition, the CCA requires Ecology to allocate allowances at no cost to an electric utility if

it provides electricity to an Ecology-identified emissions intensive, trade-exposed industrial customer. Sec. 14(5). This should give Ecology a blueprint for how to allocate allowances in a way that electric utilities can freely use those allowances, whether by assignment, assumption, retirement, or otherwise, to meet the compliance obligations for all the electricity used to serve that utility's load. In a different but related context, Ecology is authorized by the CCA to authorize refineries, fuel suppliers, facilities using natural gas, and natural gas utilities to assume the compliance obligation for fuel or natural gas. Sec. 10(8). The CCA also similarly requires Ecology to allow for allowances to be transferred between a power marketing administration and electric utilities and used for direct compliance. Sec. 14(6).

Thus, it is clearly permissible for Ecology to authorize electric utilities to similarly assume the covered entity's compliance obligation, assign the no-cost allowances to the covered entity, meet the compliance obligation for other covered entities, or in some other way use on behalf of or transfer those no-cost allowances to electric generating facilities covered under the Proposed Rule.

Without the kind of clarification suggested, the Proposed Rule may have the effect of causing electric utilities to rely on less carbon-efficient sources of generation than GHE, which is one of the cleanest natural gas-fired generators in the region. This would be contrary to the goals of the CCA and the Proposed Rule to reduce emissions of greenhouse gases and could increase emissions of global pollutants outside the state.

Covered Entities Should be Able to Use Renewable Energy Credits as Offsets

The CCA defines an "Offset project" as "a project that reduces or removes GHGs that are not covered emissions under this chapter." The Proposed Rule goes into more detail and requires that Offset Projects be "an individual activity or operation undertaken to reduce, remove, or avoid greenhouse gas emissions for the purpose of offsetting emissions elsewhere." Under both definitions, voluntary renewable energy purchases should qualify as offsets valid under the CCA. Nevertheless, Ecology staff seem to take the position that voluntary renewable energy does not reduce emissions. Although it is unclear from presentation materials what this assertion is based upon, in GHE's experience this is incorrect. If voluntary renewable energy displaces electricity demand that otherwise would have been served by carbon-emitting generation, then voluntary renewable energy certainly does reduce emissions. Indeed, renewable energy credits were a specified compliance instrument under the CCA's predecessor, the Clean Air Rule. Under that rule, in GHE's experience, renewable energy certificates were one of the most cost-effective means to comply with carbon reduction obligations. Emissions reductions from renewable energy credits are real, additional (if voluntary), quantifiable, permanent (insofar as that unit of electricity supplied by renewable energy, once consumed, cannot be replaced), verifiable through REC registries, and enforceable. There does not appear to be any valid reason why renewable energy credits associated with voluntary purchases of renewable energy should not be eligible to be used as offsets to comply with the CCA or Proposed Rule. GHE thus asks Ecology to clarify that renewable energy certificates qualify as offsets under the Proposed Rule.

Covered Entities Should Receive Allowances or Offsets for Early Action

Whether greenhouse gas reductions occurred in the past or will occur in the future, they have the same effect on reducing the greenhouse effect and all of the associated harms the CCA recognizes. Accordingly, the CCA's predecessor, the Clean Air Rule, provided credit for early actions taken by greenhouse gas emitting entities to reduce or mitigate their greenhouse gas emissions. Such credit

provides emitters with the incentive necessary to continue, and even increase, their pre-existing carbon reduction commitments. In contrast, the Proposed Rule fails to provide credit for early action by requiring offsets be registered by the arbitrary date of July 2019. This unsupported cutoff has the effect of disincentivizing early action, including especially offsets of greenhouse gas emissions between 2021 and 2023. This effect is contrary to the intent of the CCA to reduce greenhouse gas emissions.

In addition to the precedent of the Clean Air Rule, California's cap-and-trade program, to which Ecology is pursuing linkage, also recognized the benefit of recognizing early action to reduce greenhouse gas emissions. California's Program for Recognition of Early Action Offset Credits ("Program") was a program for issuing Air Resource Board ("ARB") offset credits to early action offset projects. The Program provided a path for early action offset projects using an approved voluntary quantification methodology to convert early action offset credits into ARB offset credits. The Program allowed some greenhouse gas emission reductions and removal enhancements from qualified existing projects to become eligible for use in California's Cap-and-Trade regime. By recognizing existing projects, it ensured that voluntary reductions received appropriate credit and helped create an initial supply of offset credits for California's Cap-and-Trade Program. California allowed only early action offset credits that had not been retired or used to meet another obligation to qualify. Ecology should act to not disincentivize emissions reductions, to create a robust pool of initial offsets, and be consistent with the cap-and-trade program that Ecology seeks to link with and recognize the value of early action offset credits.

Holding Limits Should be a Function of Compliance Obligations

While GHE is not opposed to a holding limit in theory, Ecology's proposed limit that is mass-based and not at all connected to an entity's compliance obligation disadvantages entities with larger compliance obligations, such as GHE. The stated purpose of the holding limit is to "protect the integrity of the auctions." Sec. 12(6). Presumably, this also includes protecting the auctions against speculative, hoarding, and anti-competitive behavior. Whatever the goals of the holding limits, they will be better served and more fairly accomplished with holding limits that are a function of the covered entity's compliance obligation rather than an arbitrary mass-based standard.

For entities that may not be covered parties under the Proposed Rule but who nevertheless hold allowances in a holding account, Ecology could either keep the mass-based standard in the Proposed Rule or make those entities' holding limits equivalent to the holding limit for a covered entity with a relatively minimal compliance obligation. This kind of limit should function to reduce speculative behavior, while at the same time recognizing the different amount of allowances entities might hold at any given time based on their current or future anticipated compliance obligations.

To the extent that Ecology retains the holding limit in the Proposed Rule, it should clarify what is meant by "annual cap on emissions." In any event, the requirement that "a covered entity or an opt-in entity may not buy more than 10 percent of the allowances offered during a single auction" should work to limit speculative allowance purchases even by the entities with the largest compliance obligation. Thus, Ecology can more fairly allow covered entities to cost-effectively and strategically meet their compliance obligations while limiting speculative behavior by tying holding limits to entities' compliance obligations.

Electric Generating Facilities with Legacy Contracts Should Receive No-Cost Allowances

According to Ecology staff, Ecology seeks to link its CCA Program with the State of California's Cap-and-Trade Program. The CCA defines linkage as "a bilateral or multilateral decision under a linkage agreement between greenhouse gas market programs to accept compliance instruments issued by a participating jurisdiction to meet the obligations of regulated entities in a partner jurisdiction and to otherwise coordinate activities to facilitate operation of a joint market." Sec. 1(45). The goals of this linkage provision are, among other things, "to reduce the costs of compliance" and "provide consistent requirements" across jurisdictions. Sec. 24(1)(b). Thus, in order to reduce the cost of compliance and be consistent with California's cap-and-trade program, Ecology should adopt California's provision allowing electric generators with legacy contracts to obtain no-cost allowances for a limited period of time.

The CCA and Proposed Rule already recognize such a type of contract that deserves protection against increased costs. Sec. 14(9). As long as such contracts do not address the costs to comply with the CCA and were in effect as of July 2021, they are protected from increased costs until the end of the first compliance period. WAC 173-446-230(4). Consistent with this provision and with California's program, Ecology should extend similar protections to all electric generating facilities

Under the California program, the CARB allocated allowances annually to eligible facilities that generated electricity under legacy contracts in order to provide transition assistance for the Cap-and-Trade Program costs not recovered through those contracts. Legacy contract generators were required to submit information to CARB no later than June 1 of the calendar year immediately preceding the year from which the generator was seeking protection.

This "phased-in" compliance obligation for generators under legacy contracts is similar to treatment already provided under the Proposed Rule for waste to energy facilities and landfills. WAC 173-446-030(2), (3). Ecology should extend similar protections to electric generating facilities who were under contracts that did not allocate the costs to comply with the CCA as of July 2021.

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