Comments of the Western Power Trading Forum
To the Washington Department of Ecology
On the Proposed Program Rules
under the Climate Commitment Act

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The Western Power Trading Forum[1] (WPTF) appreciates the opportunity to provide input to the Washington Department of Ecology (Ecology) on the CR-102 proposed program rules under the Climate Commitment Act (CCA).

WPTF appreciates that modifications made to proposed rules in areas, such as price collar provisions and auction purchase limits, to align these with those of the Western Climate Initiative (WCI) jurisdictions of California and Quebec and to facilitate program linkage. However, we note that there are still problems with respect to the baseline for electricity imports and emissions associated with imports via the Energy Imbalance Market that could undermine the environmental integrity of the program and thus undermine program linkage.

Additionally, WPTF remains extremely concerned about Ecology's plan to hold the first auction in early 2023. Ecology's recently released analyses conducted by Vivid Economics forecasts that allowance prices under CCA will be significantly higher than those in the WCI – even with an expectation of program linkage in 2025. These prices are projected to be even higher if linkage is delayed after 2025. Without the price discovery that auctions provide, entities that transact electricity and transportation fuels and that do not receive free allocation of allowances will have no choice but to assume very high allowance costs and build these assumptions into their energy sales. As these entities are already making commitments for 2023 deliveries, our concern is not hypothetical. We therefore urge Ecology to hold the first auction of 2023 allowances in November 2022 at the latest to provide price discovery.

We provide detailed comments on these and other issues below, in the order that they appear in the proposed regulation.

Applicability

Chapter 173-446-030 tracks applicability language set out in the CCA legislation in deeming entities whose emissions exceeded the 25,000 metric ton threshold in any calendar year from 2015 – 2019 to be automatically considered covered entities under the program. However, given that first compliance period goes into effect in 2023, Ecology would be remiss if it does not also deem entities that exceeded the emission threshold in years 2020 – 2022 to be covered entities. Otherwise, Ecology could create the absurd situation where an entity that exceeded the emission threshold in 2015, but not in any year since, is automatically considered a covered entity (even though it may not actually have a compliance instrument retirement obligation during the compliance period), but an entity that exceeded the threshold in 2022 would not. WPTF therefore recommends that Ecology modify the proposed rule to apply the emission threshold for covered entities for the years 2015-2022. Ecology should also clarify, both here as well as in chapter 173-446-060, that covered entity status applies for all future year until conditions for exiting the program, pursuant to 173-446-070, are met.

[1] WPTF is a diverse organization of over 90 members comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West.

Covered Emissions

Paragraph (1) of chapter 173-446-040 refers to the GHG reporting regulation for the determination of emissions subject to a compliance obligation under the program. While this approach generally works, WPTF is concerned that the reporting regulation lacks sufficient clarity regarding which entity will be considered the importer, and thus have allowance responsibility for associate emissions, with imports to Washington via the Energy Imbalance Market (EIM). The fact that retail provides must report "retail sales derived from the energy imbalance market" implies that utilities participating in the EIM are responsible for emissions associated with EIM imports, but this is not clear.

For electricity imported through a centralized market, the GHG Reporting rule defines the electricity importer as "the retail provider, marketer or asset controlling supplier that conducts an electricity transaction through the EIM that results in EIM power being delivered to final point of delivery in Washington state". There are two problems with definition. First, it does not identify a single entity as the importer but rather three options. Second, the meaning of "an electricity transaction through the EIM that results in EIM power being delivered to final point of delivery in Washington state" is not clear. In any transaction, there is a seller and a buyer. Which entity caused the import, the buyer or the seller? Consider a potential real-world example of an import resulting from a sale and transfer from Pacificorp's system to Puget Sound Energy as the buyer. Both entities are retail providers and both conducted the transaction, so which entity is considered the importer and responsible for the associated emissions? WPTF urges Ecology to clarify its intent with respect to which entity must retire allowances for emissions associated with EIM imports in the program rule.

Regardless of which entity Ecology decides is responsible for emissions associated with EIM imports under these program rules, WPTF emphasizes that this decision should not be prejudicial. Ecology has not yet conducted a formal, public process to determine the method for addressing imported electricity associated with a centralized electricity market, as required by the CCA. . Both the California Independent System Operator and the SPP Regional Transmission Organization are currently conducting processes to extend their energy-imbalance service offerings to day-ahead markets. A key consideration of both processes is the treatment of greenhouse gas emissions under the California and Washington program. To date, Washington electricity market participants have been constrained in their ability to effectively influence these discussions because of the lack of clear policy guidance from Ecology. For this reason, we urge Ecology to initiate a new rulemaking on electricity imports via organized markets as soon as possible.

WPTF also recommends that Ecology delete chapter 173-446-040, subparagraph 3(F)(e)(ii) pertaining to what happens if a Federal Power Marketing Administration has not elected to comply with the program. This provision is inappropriate because it is inconsistent with the CCA legislation. The CCA explicitly addresses two scenarios pertaining to imports by a Federal Power Marketing Administration (i.e., BPA) in the event that BPA has not elected to comply with the program. For BPA sales to a public body or cooperative customer, that customer will be considered the importer. For other BPA sales that are scheduled via a NERC E-tag, the legislation provides that the importer is the purchasing-selling-entity on the next leg of the physical path of the tag. While this entity may be a utility, there could also be an intermediary between BPA and the ultimate utility buyer and that purchase and selling entity should have the compliance obligation consistent with the reporting rules (WAC 173-441-124(2)(v)). Thus subparagraph 3(F)(e)(ii) is both unnecessary and in conflict with the legislative language and the reporting rule. WPTF therefore recommends that Ecology strike subparagraph 3(F)(e)(ii).

Exiting the Program

WPTF has several concerns with chapter 173-446-070. Our first concern is with respect to paragraph (1), which provides "When a covered entity reports covered emissions that are below 25,000 metric tons of CO_2e in any given calendar year during a compliance period, the covered entity continues to have a compliance obligation through the end of that compliance period." It is not clear from this provision whether such and entity would have a compliance obligation for all emissions during the compliance period, or only those that exceed the 25,000 ton threshold. Our understanding is that covered entities have a compliance obligation for all reported emissions (except those emissions that are explicitly exempted by rule), even when reported emissions in a calendar year are below the 25,000 ton threshold. We request Ecology to clarify this in the language of paragraph 1.

Our second concern is respect to the provision in subparagraph 2(a) that would enable Ecology to prevent an entity from exiting the program "to ensure equity among all covered entities." Given that there is no basis in the legislation for this provision, and the meaning of "ensure equity among all covered entities" is unclear, we consider it inappropriate and recommend its deletion.

Similarly, WPTF questions the need for subparagraph 2(b), which provides that Ecology will notify the appropriate policy and fiscal committee of the legislation of the name of the facility, supplier or first jurisdictional deliverer that exits the program and the reason it is no longer a covered entity. Again, we see no basis in the legislation for this provision, and no need, given that Ecology can maintain and publish a list of covered entities. This subparagraph should be struck.

Allowances

WPTF offers a minor comment on chapter 173-446-080, which is that the description of an allowance vintage year is incorrect. Because of the ability to bank allowances, it is incorrect to imply that allowances are intended to cover emissions that occur in the year of the allowance vintage. Rather, allowance vintages reflect the program budget (i.e. the annual cap) for the year from which allowances are issued. We request that Ecology modify the language of subparagraph (2) to reflect this.

Accounts for Registered Entities

Chapter 1730446-150 does not sufficiently protect information on holdings of compliance instruments by individual entities. Ecology intends to anonymize information, but still proposes to post information on compliance instruments in *individual* holding accounts. While this may be sufficient to protect the identify of smaller covered entities, larger entities would most likely be identifiable by the volume of their holdings. WPTF therefore recommends that rather than post anonymized information on individual accounts, that Ecology instead post aggregated information on holdings across all entities.

Total Program Baseline

WPTF reiterates our previous comments on the proposed methodology for constructing the electric sector baseline for purposes of determining program caps. Ecology proposes in chapter 173-446-200 to calculate the emission baseline for electricity imports using information reported by utilities in the fuel mix reports. Use of fuel-mix information would effectively be a consumption-based

inventory for electricity imports[2] and as such would be methodologically inconsistent with the way that emissions will be attributed to imported electricity during the program's compliance periods on a first jurisdictional deliverer (FJD) basis. Such methodological inconsistency would prevent evaluation of the stringency of Ecology's proposed program cap and could impair linkage with California. For this reason, we urge Ecology to develop a more robust electricity baseline using data on imports from Open Access Technology International, as outline in our previous comments and those of the joint utilities.

Adjustments to ensure consistency with proportional GHG emission limits.

WPTF remains concerned that Ecology may effectively decide to reduce allowance budgets within a compliance period by retiring allowances from the following year vintage following a a non-transparent review process and without the input of stakeholders, including covered entities. The uncertainty created regarding future allowance supply could significantly undermine confidence in the program and provide unnecessary upward pressure on allowance prices. For this reason, we urge Ecology modify paragraph (2) of chapter 173-446-250 to explicitly require a public process for review of the program, development of the progress report to the legislature, and determination of any need for adjustments to allowance budgets to ensure consistency with proportional GHG emissions limits. Such a process should provide formal opportunity for stakeholder input throughout.

Auctions

WPTF has several concerns with the proposed auction rules. First, as explained above, covered entities that do not receive free allocation of allowances must reflect their expected compliance costs in energy sales. Until a secondary allowance market develops, auctions will be the only means of predicting allowance prices. It is therefore critical that Ecology conduct the first auction in November of this year. Given that the program rules will be finalized by that time, and thus program caps and the quantity of allowances to be freely allocated known, Ecology can determine a quantity of allowances to be auctioned. Further, if Ecology contracts for auction services and the program registry through the companies that are providing those service for the WCI, which we expect is the case, it should be straightforward to have the necessary systems in place to hold the auction by November. We therefore urge Ecology to make this change in chapter 173-446-300. We also suggest that Ecology coordinate with WCI to provide training for covered entities on auction participation and the program registry well in advance of the auction.

Second, chapter 173-446-365 provides that Ecology will make available 5% of the allowances for the vintage year three -years in the future year for auction in each year. California and Quebec make 10% of future year allowances available for auction. Again, because of the importance of auctions for price discovery, in this case reflecting expectations of allowance supply/scarcity in the future, we recommend increasing this value to 10%.

Third, chapter 173-446-375 provides for Ecology to hold separate auctions for new covered and opt-in entities. WPTF sees no valid reason for giving new program entrants special, and potentially discriminatory, access to allowances. A separate auction would competitively advantage new entrants if the clearing price is lower than the clearing price in the regular auction but would disadvantage those entities if the clearing price is higher. Either result is completely inappropriate

[2] We recognize that Ecology intends to include emissions from instate generators in the baseline for facilities.

for a regulatory program. Rather than a separate auction, Ecology should simply offer the appropriate quantity of allowances from the emission containment reserve to reflect expected emissions of new entrants into the regular quarterly auctions.

Lastly, if tiers 1 and 2 of the allowance price containment reserve are depleted, Ecology should make allowances from the emissions containment reserve available for the price containment reserve auction under chapter 173-446-370. Releasing allowances from the emission containment reserve could prevent allowance prices from reaching the price ceiling and triggering the issuance of price ceiling units. Ecology could replenish the emission containment reserve when allowance prices stabilize.