



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

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ATTN: Cooper Garbe
Washington Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: Comments on the proposed cap-and-invest program rules (WAC 173-446)

The Bonneville Power Administration (BPA) appreciates the opportunity to provide comments on the Washington Department of Ecology's (Ecology) proposed cap-and-invest program rules. BPA sells about 50% of the electricity that is used in Washington State, including firm power sales to 63 consumer-owned utilities in Washington as well as sales to other public utilities and investor-owned utilities in the state. BPA also sells power into California (among other states) and is a First Jurisdictional Deliverer (FJD) for sales into California under its 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's comments focus on several key areas BPA has identified where clarity is needed to determine compliance obligations under the program and provide for program rules that work in the event BPA opts to be the FJD for federal power sales for Washington's cap-and-invest program.

1) BPA urges Ecology to provide additional clarity and process for treatment under the program of Energy Imbalance Market (EIM) imports into Washington

The definition of "electricity importer" in the GHG Reporting Rules (WAC 173-441) refers to several parties that report EIM imports to Ecology (the "retail provider, marketer, or Asset Controlling Supplier"). However, the reporting rules and the draft program rules do not identify a single covered entity for EIM imports under the cap-and-invest program, leaving BPA unsure of who will be responsible for compliance for EIM imports under the program. Identifying an appropriate covered entity for EIM imports is a complicated issue that requires coordination with the California Independent System Operator, EIM participating utilities, and

other stakeholders, which BPA believes necessitates additional process and opportunity for stakeholder input.

BPA continues to reiterate its suggestion 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 program until a permanent solution can be determined. If Ecology administratively retires allowances, these should be done from the general allowance pool and not from a utility's allocation of no cost allowances unless Ecology confirms the utility's cost burden and associated forecast of emissions explicitly includes emissions associated with EIM imports. For example, BPA believes few, if any, of the forecasts included in the Clean Energy Implementation Plans (CEIP) that consumer-owned utilities submitted for CETA include a forecast of EIM emissions resulting from BPA's participation in the EIM. BPA only began participating in the EIM in May 2022, and thus its past fuel mix data, which many utilities used as a basis for their CEIPs, does not include any EIM imports.

BPA requests that Ecology provide for additional process and rulemaking on how to treat EIM imports into the state, including clarifying reporting roles and responsibilities and identifying a covered entity or a process for administratively retiring allowances.

2) BPA requests Ecology add new language to WAC 173-446-060 and WAC 173-446-070 to provide a defined path for BPA to elect to be the FJD for federal power sales consistent with the Climate Commitment Act (CCA).

The CCA acknowledges that BPA as a federal entity can voluntarily opt to be the FJD for federal power sales into the state. BPA will not be the FJD in 2023, but is considering the role of the FJD in 2024 or later years. BPA asks Ecology to add language to WAC 173-446-060 (or other appropriate section) to clarify that if BPA opts to be the FJD then the election would be effective at the start of the next calendar year, at which point BPA would become the electricity importer and take over the compliance obligation for BPA's federal power sales into the state. BPA understands Ecology may want to include a reasonable notice period for this election, such as requiring notice from BPA 90 days before the start of the calendar year.

BPA further requests that Ecology add language under WAC 173-446-070 that clarifies that if BPA opts to be the FJD then covered entities would no longer include in their covered emissions purchases for which BPA has assumed the role of the electricity importer. For example, WAC 173-446-070 could add a section (2)(d) that permits a covered entity to exit the program if a federal power marketing administration becomes the FJD and has the compliance obligation for its imported electricity. This ensures emissions are not double counted and utilities are not unduly impacted in the event BPA decides to be an FJD.

Specific suggested language:

**New section* WAC 173-446-060. A federal power marketing administration that voluntarily elects to comply with the program becomes a covered entity at the start of the next calendar year after the federal power marketing administration makes the voluntary election.*

** New section* WAC 173-446-070 (1)(a). If a federal power marketing administration elects to comply with the program then starting with the effective date of the federal power marketing administration's election a covered entity shall not include in its covered emissions the emissions for which the federal power marketing administration has assumed the role of the electricity importer and covered entity. If this results in the covered entity reporting covered emissions below 25,000 metric tons of CO₂e, then starting the next calendar year the covered entity will no longer have a compliance obligation unless and until its covered emissions exceed 25,000 metric tons CO₂e in a later calendar year.*

3) BPA requests an exception to the holding and purchase limits in the event of extenuating circumstances.

In the event BPA opts to be a FJD under the program, BPA calculates that in foreseeable but extenuating circumstances – such as a low water and thus high emissions year – BPA will be over the proposed program holding and purchase limit thresholds based on just the allowances it needs to comply with the program. BPA requests Ecology include language in WAC 173-446-150 that allows BPA to at a minimum temporarily exceed the holding limit for a period of up to two years in these extenuating circumstances. This would provide sufficient time to provide for the transfer of allowances from BPA's 63 Washington preference customers to BPA's holding account and for BPA to purchase additional allowances to cover the compliance obligation, which would then be transferred to BPA's compliance account and surrendered to Ecology to meet its compliance obligation. BPA requests similar language for WAC 173-446-330 in the event BPA needs to purchase additional allowances at an upcoming auction to meet a compliance obligation due the immediately upcoming November. BPA's sales into Washington equal roughly one-half of all electricity consumed in the state and BPA's congressional authorization to purchase allowances under these types of programs is limited to emissions expenses associated with Bonneville's power and transmission operations.

Similarly, BPA asks Ecology to strike the language in WAC 173-446-425 and acknowledge utilities' transfer of no cost allowances to BPA do not contribute to BPA's holding limit. BPA only foresees retaining these allowances in its holding account for a limited duration of time as it would be surrendering them to Ecology for compliance.

Suggested language:

** New section* WAC 173-446-150 (2)(h). A federal power marketing administration can request and Ecology may permit the federal power marketing administration to temporarily*

exceed the holding limit for a period not to exceed two years if needed to enable the federal power marketing administration to hold allowances necessary to meet an upcoming compliance obligation.

** New section* WAC 173-446-330 (7). A federal power marketing administration can request and Ecology may permit the federal power marketing administration to purchase more than 10 percent of the allowances available at an auction if the federal power marketing administration demonstrates it needs to procure additional allowances to meet a compliance obligation due in the current calendar year.*

WAC 173-446-425 (c). The transfer will not violate ~~the federal power marketing administration's or~~ the electrical generator's holding limit.

4) BPA seeks additional streamlining of transferring allowances between BPA and utilities

BPA appreciates Ecology adding WAC 173-446-425 to enable a more streamlined process of transferring no cost allowances between utilities and a power marketing administration. BPA expects that if it opts to be the FJD for federal power sales into the state then this more streamlined process will be widely used between BPA and 63 of its firm power customers. BPA requests one additional provision that would enable Ecology to automatically transfer no cost allowances allocated to a utility directly into BPA's holding account in the event the utility agrees to this. BPA believes this will ease administrative burden for all parties involved and anticipates some, but not all, of its customers would make use of this process.

Suggested language:

** New section* (2) An electric utility may submit a request for Ecology to transfer all or a designated amount of its allowances allocated at no cost directly into the holding account of a federal power marketing administration. An electric utility wishing to utilize this section must provide a written request to Ecology containing all of the information under (1). Such a request will be effective until Ecology receives written notice from the electric utility that it is revoked.*

5) The timelines and process for distribution of no cost allowances to electric utilities needs more clarity.

BPA believes Ecology should clearly define a process and include deadlines in the rules for when utilities must register for no cost allowances, when and how utilities submit forecasts and supporting information to inform the calculation of no cost allowances, and when Ecology will disburse the no cost allowances to utilities. BPA notes there are around 50 consumer-owned utilities in the state that are medium to small-sized utilities and based on BPA's estimates will not have at least 25,000 MT CO₂e of covered emissions. A clear process will facilitate more effective engagement between Ecology and these utilities in the allocation and distribution of no cost allowances.

Ecology should not just assume the CEIPs reflect a best available forecast of emissions for purposes of the CCA. As mentioned above in (1), the CEIPs were not created for purposes of the CCA. BPA believes most of the CEIPs for these medium to small consumer-owned utilities do not contain a full forecast of emissions that will result in an accurate cost burden under the CCA. For example, most utilities' CEIPs do not include consideration of BPA's participation in the EIM and attributed forecasted emissions. These CEIPs may also not fully include a forecast of electrification, but the CCA explicitly provides utilities with no cost allowances for electrification. Thus, BPA encourages Ecology to amend WAC 173-446-230 in order to work with these utilities to facilitate submission of an alternative cost burden forecast for purposes of the CCA.

Additionally, Ecology's rules should provide an opportunity for an electric utility to update its cost burden forecast in the event that BPA enters the program as a covered entity.

In terms of specific changes to the proposed rules, BPA suggests the following:

- WAC 173-446-053. Ecology should include a deadline for electric utility registration to receive no cost allowances. For example, EITE facilities must register by September 15, 2022. Ecology should also provide an additional opportunity for utilities to register for no cost allowances in the event BPA decides to be an FJD.
- WAC 173-446-053. Ecology should define how utilities that have at least 10,000 MT CO₂e but do not have at least 25,000 MT CO₂e of covered emissions register for no cost allowances. The proposed rules clarify that utilities with covered emissions over 25,000 MT CO₂e are automatically registered (WAC 173-446-050), and utilities under 10,000 MT CO₂e must register to receive no cost allowances (WAC 173-446-053), but do not stipulate the process for the utilities between 10,000 and 25,000 MT CO₂e. It is not clear how all utilities set up their electronic compliance accounts in order to receive no cost allowances.
- WAC 173-446-230 (1)(b)(v). Ecology should provide a deadline for when electric utilities must provide Ecology with a utility-specific forecast. Ecology should also provide supporting documentation clarifying the process for how utilities work with Ecology to submit this documentation. Ecology should allow for a one-time update to these forecasts in the event BPA decides to be the FJD.
- WAC 173-446-230 (5). BPA reiterates its previous request that the proposed rule specify that no cost allowances can be transferred to a federal power marketing administration. This is explicitly allowed for in the CCA. BPA asks Ecology to update the proposed language to specify no cost allowances can be "...transferred at no cost to an electric generating facility *or power marketing administration* as described in WAC 173-446-425..."

- WAC 173-446-260. Ecology should include the date(s) when it will distribute no cost allowances to electric utilities. No cost allowances are distributed to electric utilities who have authorized accounts in the electronic compliance instrument tracking system, but it is not clear if or how utilities obtain authorized electronic compliance accounts.

6) Ecology needs to define the process for designating BPA as an ACS

An Asset Controlling Supplier (ACS) is defined as an entity that “has been designated by [Ecology] and received a department-published emissions factor...” (emphasis added). The concept of an ACS was specifically created with BPA in mind (though BPA is not the only entity that could be designated as an ACS) because BPA makes system sales and needs an ACS emissions factor that applies to those specified system sales. Prior to 2023, BPA needs Ecology to designate it as an ACS and publish its ACS emissions factor applicable for the upcoming calendar year.

BPA requests Ecology designate BPA as an ACS by September 1, 2022 in order to facilitate power transactions for 2023 that will occur as early as this fall. An official email from Ecology designating BPA as an ACS would meet BPA’s needs. This ACS designation will roll-over each year unless the ACS notifies Ecology of a change in status.

BPA further requests Ecology publish BPA’s ACS emissions factor for 2023 no later than November 15, 2022. Parties need to know the emissions factor that applies to ACS purchases from BPA when entering into transactions. CARB publishes in late fall of every year the ACS emissions factors that is applicable for the upcoming calendar year.¹ BPA has officially reported to CARB its 2021 fuel mix, which is in the process of being verified by a third party, and will be the basis for BPA’s 2023 ACS emissions factor for sales into California. BPA would like to discuss with Ecology the process of utilizing this official fuel mix and emissions data as the basis for BPA’s 2023 ACS emissions factor for sales into Washington as well.

Finally, Ecology should clarify in the program rules the process for designating an entity as an ACS for future purposes.

7) Additional suggested additions or clarifications.

BPA suggests several specific additions or clarifications to the proposed program rules.

- a. WAC 173-446-020. Definitions.
 - i. The definition for “NERC e-tag” is incorrect. As BPA noted in comments on the GHG reporting rules, the functional specification for e-tagging was transferred from NERC to NAESB several years ago. The definition used in the GHG reporting rules, WAC 173-441-124 (2)(k), is correct.

¹ See [Mandatory GHG Reporting - Asset Controlling Supplier | California Air Resources Board](#)

- ii. There is no definition for Emissions-Intensive Trade-Exposed Entities (EITE). Defining this term would be helpful, even if it points to a definition in the CCA or EITE rules.
- b. WAC 173-446-040. Covered Emissions. Section (3)(e)(ii). BPA asks Ecology to delete this language and instead cite back to the CCA and GHG reporting rules. The language in the proposed rules is inconsistent with statutory language and thus creates confusion. The last sentence in this paragraph is incorrect as stated and is only accurate if each utility has GHG emissions that exceed 25,000 MT CO₂e: “*Such a utility is a covered entity under this program and has the compliance obligation for the GHG emissions associated with that electricity.*” BPA believes the statute is clear and there is no need to further expand on it in the rules.
- c. WAC 173-446-050. Covered and opt-in entity registration. BPA would like clarity that it will not be automatically registered as a covered entity. If BPA is reporting emissions that are covered under the program, but is not the electricity importer/FJD for those covered emissions, BPA should not be automatically registered. BPA proposes the language specifically exempt a federal power marketing administration:

WAC 173-446-050 Covered and opt-in entity registration. (1) Any reporter, except for a federal power marketing administration, under chapter 173-441 WAC reporting at least 25,000 metric tons of CO₂e covered emissions per calendar year for 2015 or any year thereafter that meets the applicability conditions in WAC 173-446-030 or 173-446-060 is automatically registered as a covered entity in Washington's cap and invest program.
- d. WAC 173-446-250. Removing and Retiring Allowances. Section 1. There is no definition of “invalidation”; it is not clear what is intended.
- e. WAC 173-446-310. Public Notice. Section (1)(c). Ecology should not need to post the emissions containment reserve trigger price given Ecology is proposing to suspend it under WAC 173-446-340.
- f. WAC 173-446-335. Auction Floor Price and Ceiling Price. The proposed 2023 floor and ceiling prices are the same as CARB’s floor and ceiling prices for 2022. While this may be intentional and is not an issue at the start of the program, if the programs do link at some point in the future then these prices will need to align at that point.
- g. WAC 173-446-350. Bids. Section (2). Ecology should use the same electronic platform as CARB. The proposed rules state Ecology is requiring sealed bids, submitted in the form approved by Ecology. This seems to indicate Ecology does not intend to adopt an electronic bidding platform compatible with the platform used by

California and Quebec, and it is important that Washington and California use compatible electronic platforms.

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

BPA reiterates its previous comments, filed on January 26, 2022, regarding several sections (WAC 173-446-050, 173-446-053, 173-446-055, 173-446-056, 173-446-105, 173-446-130, and 173-446-415 (in previous comments, this was section 173-446-430(1)(g)) that 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. BPA requests that Ecology work with BPA to provide similar accommodations.

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,



Alisa Kaseweter
Climate Change Specialist
Intergovernmental Affairs
Bonneville Power Administration
alkaseweter@bpa.gov
503.230.4358