



Administration Department

July 15, 2022

Mr. Josh Grice
Washington Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504

RE: WAC 173-446 Proposed Rule / Climate Commitment Act

Mr. Grice:

On behalf of the City of Enumclaw (CoE), we the City Council offer the following comments, questions, and observations with regards to the proposed Climate Commitment Act rules – WAC 173-446.

CoE operates a non-profit municipal natural gas distribution system, serving more than 5,000 residential customers and over 500 commercial customers. Roughly one quarter of the City's residential customers are considered to be at or below 200% federal poverty level, according to the 2019 American Community Survey (ACS). As expressed in the public testimony by Council Members, Anthony Wright, and Chance LaFleur, CoE has had little insight into the Climate Commitment Act (CCA) and the current development of the rules. While we appreciate the opportunity to comment, we hope to impress on the Washington Department of Ecology (Ecology) the limited opportunity CoE will have to comply with the CCA and the costs it will impose on our community.

For instance, CoE has done an excellent job of running an effective non-profit NG utility: it has kept surplus funds at just enough to cover capital expenditures, has hedged effectively, and has kept rates low which has a disproportionate positive impact on economically marginalized people. Because CoE has run such an effective utility, it is now massively disadvantaged when purchasing offsets as we don't have additional funds, don't have economies of scale, and can't pool from other subsidiaries. As a result, the CCA could quite possibly result in a much larger negative impact on Enumclaw citizens than any other area of the state.

Remove CoE from the Program: On June 14, 2022, CoE's Public Works Department sent a letter to Stephanie Gee in the Ecology Air Quality Program advising Ecology of revised emissions data for CY2015 to 2019. In that letter, CoE's modified emissions data reduces the annual emissions below the required emission levels for inclusion in the state's CCA program as a covered entity.

We have had dialogue with Ecology, and provided a review of our data, concerning the adjusted emissions and calculations. Given our new data is below the 25,000 MT CO₂e for the baseline years, we respectfully request that Ecology acknowledge the updated work and remove CoE as a covered entity.

On July 13, 2022, Ecology reached out to CoE staff, informing them of Ecology's determination that CoE would be a Covered Entity. Ecology stated that the emissions reported by CoE for CY2021 exceeded the emissions threshold, which would place CoE in the program. CoE subsequently requested a meeting so that Ecology may provide a citation of the proposed rule section clarifying CoE's coverage under the program. Unfortunately, Ecology could not give a specific code section. They would only state that "Ecology has determined under plane language, CoE is covered under the rule" and that we should provide comments as we deem necessary.

Ecology requested an additional meeting on July 14, 2022, stating that the meeting would provide CoE clarification on the determination previously given to the city. In this meeting, Ecology noted that the Attorney General's Office had determined that CoE was covered but would not provide any cited rule language or section to make this determination. Ecology requested that CoE provide comments under any section we felt required clarification. CoE staff reiterated that we intend to provide comments; however, without knowing how Ecology made this determination, commenting would be difficult. Refusing to give the specific statutory provisions does not afford the City a meaningful opportunity. CoE requests that Ecology provides the City with the specific statutory section of 173-446 indicating the City to be a covered entity. Furthermore, the comment period should be extended, providing adequate time for CoE to review the determination and submit additional comments.

Provide Alternative Compliance and Allowance Allocation: Despite CoE believing it should be removed from the program based on our revised emissions data, CoE is requesting that Ecology consider an alternative compliance or allowance allocation for municipal gas systems.

Based on the legislative record and the proposed rule, the costs and implications for municipal gas systems were simply not considered as legislators designed a program for emission reductions from large private-owned gas distribution companies.

As a small municipal gas distribution system, we will need to raise customer rates to capture the capital required to comply with a 7% annual reduction in allowances and the mandatory 65% assignment to auction as prescribed in this program. The Ecology Preliminary Economic Analyses estimates a cost of nearly \$59 per allowance – a 160% increase of the estimated allowance price provided to legislators in the Ecology fiscal note. This equates to a 23% rate increase for our average community customer, just so CoE can comply the CCA program.

Given the potential impact to CoE customers, we would like to know:

- Did Ecology consider the costs to municipal gas distribution systems?
- Did Ecology consider the costs to small businesses – more than 500 in CoE – because of the compliance obligations projected? If so, please provide a copy to CoE.

The resulting cost implications for the CoE gas distribution system requires Ecology to provide a less burdensome compliance pathway. The current program contemplates the economic hardship for other sectors of the economy – such as energy intensive and trade exposed industries, landfills, agricultural, aviation, and more.

We ask that Ecology use the discretion provided by the Legislature to allow more time for systems like municipal gas distributions to find reasonable pathways to decarbonization that will not result in unsustainable rate increases.

Alternatively, our customers have limited options not fully contemplated by Ecology's regulatory analysis or small business impact findings. Our customers will see cost increases, either through increased rates or electrification of their homes and businesses. Both of which will result is an economic hardship for our CoE customer. Some estimates show that it would cost CoE customers more than \$35,000.00 to modify homes if required to switch to all electric services for home heating. These costs include labor and appliances if electrification is required.

Furthermore, losing customers to electrification is inconsistent with the state's efforts to review and decarbonize the natural gas systems of the state. Currently the state is funding efforts to look at renewable hydrogen and renewable natural gas, both of which may be options for CoE customers. In addition, the state is reviewing the best ways to decarbonize the state's investor-owned gas distribution networks through a study at the Utilities and Transportation Commission. All this work is more evidence that CoE should be afforded an alternative compliance option, providing the time necessary to rationally invest with our customer in our own decarbonation efforts.

No Cost Allowances: In our strict reading of RCW 70A.65.130 requires Ecology, in consolation with the Utilities and Transportation Commission to provide no cost allowances to natural gas utilities to minimize the impacts of customers. While CoE is not under the jurisdictional purview of the Utilities and Transportation Commission, we see no evidence in the record that this work was done, and Ecology didn't consult with our governing body for the local gas distribution system.

The statutory language in RCW 70A.65.130(1)(b) emphasizes the total distribution should be done to the benefit of the ratepayers over the first two compliance periods. Adopting an immediate 7% decline in allowance allocation based on an undefined proportionality doesn't seem equitable to CoE ratepayers, nor consistent with our reading of the statute. The no cost language Proposed WAC 173-446-240(2)(a)(i) sets the total no-cost allowances allocated to natural gas utilities at 93% for emission year 2023, with an additional 7% decline each year

through 2030. Subsection (2)(b) then adjusts the no-cost allowances for emissions years 2031 through 2042 by an additional 1.8% per year of allocation baseline. Subsection 2(c) adjusts down an additional 2.6% per year for emissions years 2043 through 2049.

The proposed rule for distribution of allowances to natural gas distribution systems is inconsistent with the legislative intent and statutory reading.

Ecology should revise the proposed allocation of allowances for municipal natural gas systems to provide 100% no cost allowance through the first two compliance periods. Ecology should further schedule time to meet with the governing authority of the municipal natural gas system and share with us the findings of the consultation between Ecology and the Utilities and Transportation Commission.

Alternatively, Ecology should revise WAC 173-446-240(2) so that no-cost allowances provided to gas utilities are reduced less in the first compliance period (2023-2036) and more in later compliance periods. Starting the program with more no-cost allowances for gas utilities would—consistent with the CCA—minimize program impacts on gas customers and provide gas utilities time needed to transition to cost effective low-carbon options. As previously stated, CoE is concerned that if gas rates increase rapidly, customers could switch to other more carbon intensive heating products—which is inconsistent with the goals of the CCA. CoE supports achieving emissions reductions but remains concerned that the steep decline in the no-cost allowance allocations for gas utilities in the first compliance period does not account for (1) gas utilities' duties to serve its customers; and (2) the time it takes to realistically explore energy efficiency and add renewable energy supply to the city's gas portfolio. Ecology's proposed rules in 173-446 also fail to provide adequate clarification for treatment of no cost allowances if weather requires greater natural gas use for heating. How will Ecology true up the forecasted allowances in a timely manner to meet weather variability? The rules thus far seem to shift unnecessary burden to our customers. The timing of increased demand for energy, and our requirement to serve, doesn't satisfactorily meet our needs. The rules should specifically clarify the process for modifying forecasts in real-time to allow for this foreseen variability.

Exiting the program: The proposed section WAC 173-446-070 does not provide adequate means for exiting the program when emissions have been permanently reduced through operational modifications or reduction in process. The only method for exit, is by reporting emissions below the 25,000 MT CO₂e for an entire compliance period (4-years) or permanently ceasing all processes which require reporting. These methods do not consider opportunities to reduce emissions permanently and significantly during the compliance period. CoE requests that Ecology provides a method for exiting the program based on a covered entities ability to permanently reduce emissions below the 25,000 MT CO₂e limit.

At a minimum, Ecology should also clarify in the definition of "biomass-derived fuel" at WAC 173-446-020(1)(o) that fuels such as RNG purchased to comply with the CCA program does not have to be tracked to the specific end-user of where the RNG is delivered. This clarification is

consistent with Washington's long-standing renewable portfolio standard for electricity. RNG, like renewable electricity, is purchased on behalf of customers, but it is impracticable to track the actual gas molecules or electrons to a specific location upon delivery. This 'book and claim' concept is well accepted in environmental markets and spurs growth in renewable energy sources. IF CoE is able to secure RNG as a decarbonization effort, we need assurance it will be accurately counted.

Low-income: During a recent public hearing on proposed WAC 173-446, CoE Councilmember Wright shared as much as 80% of CoE customers may be considered low-income. The King County median income is \$99,000.00 annually. 80% of the King County median income is considered low-income at \$79,200.00. The median income of CoE is at \$61,000.00, well below the threshold for low-income. Additionally, nearly 23% of our community are senior citizens, adding to the potential cost burden for those that may be on fixed incomes.

The allocation of allowances to a natural gas utility should directly ensure no cost to the low-income per RCW 70A.65.130(1)(b). The immediate Ecology proposed allocation of allowances ensures that low-income community members will have direct costs associated with the program, regardless of the consignment decisions of CoE.

We strongly encourage Ecology to provide cost relief to the most vulnerable populations in our community.

As a small municipal gas distribution system, providing heating to low-income, senior citizens, and small businesses we appeal to Ecology to better understand the implications of the CCA program, and provide necessary clarifications to your rules to ensure sufficient allowances for no cost to our customers. Please don't hesitate to reach out to us if you have any questions regarding our comments, or the recalculation of our emissions reported between 2015-2019. Thank you for the opportunity to provide these comments. The City of Enumclaw looks forward to a continued dialogue throughout the rulemaking process.

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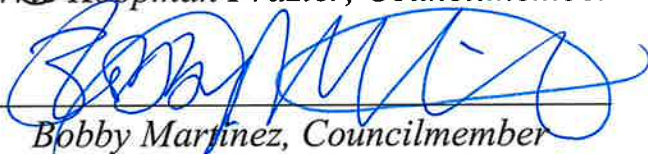
Jan Molinaro, Mayor




Corrie Koopman Frazier, Councilmember



Beau Chevassus, Councilmember



Bobby Martinez, Councilmember



Chance LaFleur, Councilmember



Thomas Sauvageau, Councilmember



Anthony Wright, Councilmember



Chris Gruher, Councilmember

Approved this 15 day of July, 2022.



July 15, 2022

City of Enumclaw Comment Letter – Proposed Rule Chapter 173-446 WAC
Climate Commitment Act Program (the “Program”)

My firm represents the City of Enumclaw (the “City”). While the City lauds the goals of the Program, the goals should not be used to adopt rules that exceed the legislative scope of the applicable enabling and authorizing statutes of what constitutes a “Covered Entity” pursuant to RCW 70A.65.080. Ecology has stated to City staff that, the City is a “covered entity” but has not provided the statutes that have been used to make that determination. Such “hide-the-ball” determinations are not consistent with the due process provisions of state and federal law nor case law interpreting the obligations of entities engaging in formal rule making procedures as it does not afford the City a meaningful opportunity to comment. Additionally, such determinations appear to be arbitrary and capricious and without basis in law or in fact. Therefore, the City reserves the right to make additional comments and supplement its response.

RCW 70A.65.080 states in relevant part,

- (1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from **2015 through 2019**, or if additional data provided as required by this chapter indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds, or if the person is a first jurisdictional deliverer and imports electricity into the state during the compliance period:
- (a) Where the person owns or operates a facility and the facility's emissions equal or exceed **25,000 metric tons of carbon dioxide equivalent**;*[...]* (emphasis added)

The City has not exceeded 25,000 metric tons of carbon dioxide equivalent for the coverage period of 2015 to 2019. Therefore, by the plain language of RCW 70A.65.080, the City legally cannot be considered a covered entity. The proposed rule WAC 173-446-030 is consistent with this enabling statute. However, Ecology is not interpreting the proposed rule consistent with the enabling statute. Pursuant to WAC 173-446-030, a Supplier is a covered entity if it exceeds 25,000 metric tons of carbon dioxide equivalents for any calendar year from in the covered period between from 2015 through 2019. Therefore, since the City has not exceeded 25,000 metric tons of carbon dioxide equivalent for the period of 2015 through 2019, it is axiomatic that the city cannot be a covered entity. Therefore, Ecology’s determination that the City is a covered entity is inconsistent with both the enabling RCW and the proposed rule.

In one conversation, Ecology stated that WAC 173-446-050 may be applicable. The operable language is as follows: Any reporter under chapter 173-441 WAC reporting at least 25,000 metric tons of emissions per calendar year for 2015 or any year thereafter that meet the applicability conditions in WAC 173-446-030 or 173-446-060 is a covered entity. The plain language of this proposed rule indicates that to be a covered entity, the City must also meet the definition of a covered entity pursuant to the provisions of



WAC 173-446-030 or WAC 173-446-060. WAC173-446-050 is not a separate or independent basis for determining what constitutes a covered entity. As set forth above, the City is not a covered entity pursuant to 173-446-030. Additionally, 173-446-060 is for New or Modified covered entities after July 1, 2023 and is also not applicable. Therefore, even assuming WAC 173-446-050 was a separate basis for determining covered entities, since WAC 173-446-050 cites to WAC 173-446-030 and 173-446-060; both statutes must be read in conjunction. As the City is not a covered entity under either 173-446-030 or 173-446-060; Ecology's determination that the City is a covered entity is not consistent with the plain language of either the enabling statute or the proposed rule.

Based upon this legal analysis, the City is requesting Ecology make the determination that the City is not a covered entity. Please feel free to contact me should you have any additional questions.

Sincerely,

/s/

Brett C. Vinson
Enumclaw City Attorney