July 15, 2022

Filed Via Web Portal

Attention: Joshua Grice
Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

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

On May 16, 2022, the Washington Department of Ecology (Ecology) issued form CR-102 (WSR 22-11-067) soliciting formal comments on its proposed new rule, Chapter 173-446 WAC, Climate Commitment Act Program. The following comments are submitted jointly by Grant, Douglas, and Cowlitz Public Utility Districts.

Cowlitz, Douglas, and Grant Public Utility Districts (herein after referred to as the affected utilities) are small, publicly owned utilities that own or rely primarily on hydropower to serve retail electric load. Douglas and Grant own and operate hydroelectric dams; Cowlitz is a 'preference customer' of the Bonneville Power Administration (BPA) and owns a hydroelectric project that is operated contractually by PacifiCorp. All three utilities must regularly purchase power in the wholesale electricity markets. To the extent that these wholesale purchases are purchased at the Mid-Columbia (Mid-C) trading hub in Washington State, the in-state generator or the electricity importer will have the compliance obligation for any associated emissions and include the carbon compliance cost in their energy offer price. The affected utilities expect to receive a free allocation of allowances to compensate for the cost burden of the increased power price.

However, this simple and straight forward outcome is complicated if BPA does not elect to comply with the Climate Commitment Act (CCA), as the compliance obligation for its electricity imports is now assumed by the next Purchasing-Selling-Entity (PSE) in the physical path of the NERC e-tag. The physical path tracks the generation from source to sink, and only includes those entities involved in generating, transmitting, or sinking the energy. The market path of a NERC e-tag captures all of the purchases and sales between entities and many times can include entities who never show up in the physical path of the NERC e-tag. The NERC e-tag is created through the scheduling process whereby each entity ensures they deliver or receive energy as contracted. This could involve simply matching up a sale with a

purchase (in this case the entity likely only shows up in the market path) or actually generating, transmitting, or sinking the energy (in this case the entity would show up in the market path and physical path). Because BPA's Balancing Authority Area (BAA) connects to the Mid-C trading hub, through which much of Washington's wholesale power is transacted, the physical path on the NERC e-tag will many times end up being from BPA's system delivered directly to the BAA (Grant or Douglas) or a scheduling point within BPA's system (Cowlitz). The compliance obligation effectively transfers to the affected utilities for these BPA imports. It is important to clarify that the affected utilities don't have to purchase from BPA to end up with this compliance obligation as in many cases an upstream party in the market path actually purchased from BPA and only through the scheduling process does the carbon obligation roll to the affected utilities. Lastly, this compliance obligation is in addition to the embedded cost of carbon in the Mid-C energy price and only occurs when the energy is imported by BPA; if the energy is generated or imported by any other entity there is no additional compliance obligation as the other entity is the first jurisdictional deliverer (FJD).

If BPA were to elect to comply with the CCA then they would assume the compliance obligation as the importer and the associated emissions would be determined using the asset controlling supplier (ACS) emission rate. In this case, the affected utilities would not anticipate having a compliance obligation under the program due to total reported emissions remaining under the 25k emission threshold. However, if BPA does not elect to comply with the program, and if the affected utilities are required to report purchases of wholesale power sourced from BPA as unspecified purchases, these purchases would likely cause each of the affected utilities to become a covered entity and thus have a compliance obligation for all emissions throughout the compliance period.

The affected utilities support the provisions in the CCA that enable BPA as a federal entity to determine for itself whether to be a covered entity. However, we do not believe that the legislature intended that BPA's decision to not to be a covered entity would trigger a compliance obligation for public utilities, due to exceeding the 25k emission threshold. Most of the small public utilities in the state will fall below the 25k emission threshold and therefore will not be covered entities. This is due to the fact that as BPA 'preference customers', power purchased from BPA under these arrangements would qualify as specified power and be assigned BPA's ACS emission rate of around 0.0160 MT CO2e per MWh. For the affected utilities, their wholesale purchases scheduled from BPA will be unspecified and consequently assigned the default emission rate of .437 MT CO2e per MWh. At the unspecified emission rate, only a small volume of wholesale purchases that end up imported from BPA (around 7 aMW annually) could trigger a compliance obligation for these utilities, where they would not otherwise have one.

Other Washington utilities will either be considered covered entities due to the volume of emissions associated with their in-state generation and other energy contracts or will fall below the 25k threshold because all of their power is provided as BPA preference power and they don't purchase enough volume at the ACS rate to trigger a compliance obligation. To avoid such an unfair outcome, the affected utilities request that Ecology revise paragraph 3(e) of WAC 173-446-040 to enable public utilities that would not otherwise be considered covered entities, but for wholesale purchases where energy is imported by BPA, to report these purchases using BPA's ACS emission rate:

WAC 173-446-040 Covered emissions.

…

(3) Allotment of covered emissions to avoid double counting or including emissions that occur outside the program. The facility, supplier, or first jurisdictional deliverer that

reports GHG emissions under chapter 173-441 WAC holds the compliance obligation for the covered emissions it reports unless otherwise provided in this subsection. This subsection provides details on allotment for covered emissions that are potentially attributable to multiple parties and pro- vides direction for allotment when such emissions may be reported by multiple facilities, suppliers, or first jurisdictional deliverers of electricity. This subsection only describes the process for determining which covered entity is responsible for a given metric ton of covered emissions after the application of exemptions described in subsection (2) of this section, and does not expand the definition of covered emissions.

…

(e) Allotment of covered emissions for first jurisdictional deliverers of imported electricity.

(i) GHG emissions associated with imported electricity are covered emissions for the first jurisdictional deliverer serving as the electricity importer for that electricity.

(ii) If the electricity importer is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has not voluntarily elected to comply with the program, then a utility that purchases electricity for use in the state of Washington from that federal power marketing administration is the importer and first jurisdictional deliverer of that electricity. Such a utility is a covered entity under this program and has the compliance obligation for the GHG emissions associated with that electricity.

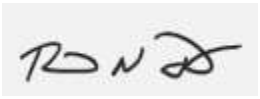
a. <u>If scheduling of electricity imported by a federal power marketing administration that has not elected to comply with the program results in a utility being considered the first jurisdictional deliverer for that electricity import and the attribution of emissions to that import at the unspecified emission rate would alone cause the utility to exceed the applicability threshold in chapter 173-446-030, such import shall instead be considered a specified source import and attributed the federal power marketing administration's Asset Controlling Supplier emission rate.</u>

We recognize that this approach would treat BPA imports to Washington somewhat differently than those to California. However, there are key differences between the CCA and California's program that merit this different treatment. California's program asserts jurisdiction over BPA such that BPA is automatically considered a covered entity under their program – BPA does not have the option to elect to comply for its imports to California. As a result, California's program does not contemplate the situation where BPA's decision to not to be a covered entity could trigger a compliance obligation for downstream utilities. Second, BPA sourced power serves a much greater portion of retail load in Washington than in California, due to BPA's special relationship with PNW utilities and the volume of surplus BPA power transacted at the Mid-C hub.

Our proposed solution would avoid what we consider to be an unintended and unfair consequence of the optionality provided to BPA under the CCA. Because only a small number of utilities would be impacted, and the regulatory change would simply enable those utilities to remain below the 25k threshold as intended by the legislation by assigning the same emission rate that would be used if BPA were a covered entity, it would not undermine the environmental integrity of the program. It may also only need to be a short-term fix, if BPA ultimately elects to be a covered entity. Under this approach, the affected utilities will no longer need to request additional free allowances to cover this additional compliance obligation associated with energy imported by BPA.

Thank you for your consideration of our concerns and comments on this issue. We look forward to further engaging with the Department of Ecology.

Sincerely,



Rich Flanigan
Senior Manager of Wholesale Marketing and Supply
Grant PUD

/s/ Steve Taylor

Steve Taylor
Director of Regulatory and Regional Affairs
Cowlitz PUD

Jeff Johnson
Power Planning Supervisor
Douglas PUD