CalETC
California Electric Transportation Coalition

August 31, 2022

Ms. Rachel Assink
Rulemaking Lead
Washington State Department of Ecology
300 Desmond Drive SE Lacey, WA 98503

RE: Clean Fuels Program Rulemaking – CR-102 Rule Proposal Phase

Submitted on-line at https://aq.ecology.commentinput.com/?id=KTPeV

Dear Ms. Assink,

CalETC appreciates this opportunity to comment on the chapter WAC 173-424 CR-102 phase of the Clean Fuel Program (CFP) rulemaking. CalETC supports and advocates for the transition to a zero-emission transportation future to spur economic growth, ensure clean air, and combat climate change. CalETC is a non-profit association committed to the successful introduction and large-scale deployment of all forms of electric transportation including plug-in electric vehicles (EVs) of all weight classes, transit buses, port electrification, off-road EVs and equipment, and rail. Our board of directors includes Los Angeles Department of Water and Power, Pacific Gas and Electric, Sacramento Municipal Utility District, San Diego Gas and Electric, Southern California Edison, the Northern California Power Agency, and the Southern California Public Power Authority. Our membership also includes major automakers, manufacturers of zero-emission trucks and buses, and other industry leaders supporting transportation electrification.

CalETC would also like to acknowledge our appreciation of the tremendous effort and accessibility of Department of Ecology (Ecology) staff during the extensive public process leading up to this draft CFP rule. After seeing the full sixteen-year effort in California with the Low Carbon Fuel Standard (LCFS), we recognize that additional changes will need to be made in future years with both new rulemakings and guidance documents due to the complexity of this rulemaking. We also submit our comments based on the lessons learned from the LCFS so that Washington may have a more successful CFP launch. We also realize that Washington has its own needs and expect the Department of Ecology to make appropriate changes.

We applaud Ecology for separating regulated parties from credit generators and for making credit generators voluntary in the draft regulation. We applaud Ecology for allowing electric airport ground support equipment to generate credits and for having utility-specific carbon intensity in a look-up table, both of which California has not done. We also believe that the advanced credit provisions in the CFP, the details on residential credit estimation and the capacity credits for medium- and heavy-duty vehicle refueling will be the first-in-the nation, and

we applaud Ecology for that. Below, we suggest a few other ways that Ecology can be the first in the nation to adopt innovative provisions in the final CFP.

CalETC shares Washington's goals of reducing greenhouse gas and other air pollution from the transportation sector and accelerating electric transportation especially in frontline and other priority communities. From our experience in California, we know that utilities will make excellent partners with Ecology and strong participants in the CFP. Utilities have vast experience with administering customer-centric programs, enhancing customer value, increasing reliability, reducing costs, and helping customers in their journey to electrification.

Below we offer specific comments on different parts of the draft CRP.

CalETC opposes the provision where different parties receive base residential credits.
We respectfully request that Ecology use the LCFS approach regarding selecting the credit generator for base residential credits as that is much simpler for Ecology and for the utilities. While we appreciate that Ecology has designed the electric utilities as the first-in-line credit generator for single family residences, we don't think this is a workable approach based on the lessons learned from California. For the entire history of LCFS, the electric distribution utilities (EDUs) are the credit generators for base residential credits, and the California Air Resources Board (CARB) has rejected proposals in different rulemakings for single family residences and multifamily residences to be assigned to different credit generators.

Under the proposed CFP, utilities and Ecology will be faced with an unnecessarily complex situation. EDUs will either need to fund programs for multifamily residences using proceeds from CFP credits from EV drivers in single family residences, or they will need to exclude residents of multifamily homes from utility programs funded by LCFS. Both options are unattractive and impractical. Further, under the current CFP, Ecology will likely be asked to create a complex system of estimating base residential credits that are assigned to EDUs, this will also increase complexity of the program.

Creating utility programs at scale using these base residential credits will require a large number of credits from both single family and multi-family dwellings. (In California, we have both utility-specific and statewide programs.) Limiting the pool of EDU credits to only single-family residences will result in much smaller utility equity and non-equity programs for light-, medium and heavy-duty vehicles funded by base residential credit proceeds. One lesson learned from California is that it takes time to accumulate sufficient funds to run large programs, both utility-specific and statewide. If, in the future, Ecology or the utilities opt to develop statewide programs, for equity or other purposes using EDU's base residential credits, this will unfairly result in excluding those who live in multi-unit dwellings. Excluding Washingtonians who reside

in multi-unity dwellings from future statewide programs or from utility-specific programs raises equity concerns.

Fundamentally, CalETC believes that this is an equity issue, as EV drivers in multifamily residences need the same utility programs as those in single family residences. Those programs could consist of rebates for new or used EVs, equity programs, and other utility programs funded by residential CFP proceeds. In addition, the experience from California is that utilities make strong partners for Ecology. Unlike other entities, utilities have a long history of being trusted partners with regulatory agencies and already have been directed by the Legislature on how to spend credit proceeds.

CalETC encourages Ecology to not let the perfect be the enemy of the good.

One of the lessons learned from LCFS is that it can't do everything. Another lesson is that good solutions are acceptable. We have found that many stakeholders forget that LCFS is a fuels program and want it to solve many other non-fuel-related issues that need to be addressed as electric transportation is commercialized. However, LCFS is just one of many funding sources and can't address every issue. Furthermore, adding complexity and accuracy, while a worthy long-term goal, is not realistic given staff constraints even in large regulatory agencies such as CARB.

Finally, the method by which credits are measured or estimated is only one part of much longer issue list and should not be confused with other regulatory issues such as 1) who generates the credits, 2) how are the proceeds spent and 3) what is the reporting and oversight process. These three steps, in our opinion, are even more important in developing a workable CFP.

CalETC recommends that utilities should not provide estimated base residential credit kWh either individually or collectively, as Ecology should be the one to take on this role exclusively.

Based on the experience in the early years of LCFS, CARB, in 2015, eliminated the requirement that utilities collectively propose an estimation methodology for base residential credit kWh for use by CARB. The draft CFP provides Ecology with several methodologies that can be used to estimate base residential credits, which is innovative compared to the LCFS.[i] Utilities can and should propose ideas to Ecology, and the draft CFP allows this. However, requiring utilities to provide estimated base residential credits is not only unnecessary but also confusing. Worse, the draft CFP would require this estimation data and methodology quarterly from each utility which, in our opinion, creates a heavy burden for both Ecology and the utilities.[ii] For example, the small utilities will not be receiving a significant amount of proceeds from CRP credit sales, and this proposed requirement will take up too much of their labor budget. In addition, we do not think the utilities have any unique data that will be helpful on a regular basis. On the other hand, we are confident that simply asking the utilities for their opinion on an estimation methodology that Ecology develops will be successful.

Relatedly, CARB has the ability, through guidance documents, to update the estimation methodology for base residential credits, and we recommend this flexibility to Ecology. Further, we recommend that Ecology use a public comment process like we have in California for LCFS guidance documents so that utilities and other stakeholders can provide feedback to Ecology, and that these comments be posted. Based on feedback, the guidance documents for LCFS are then updated. We recommend that Ecology do the same, as this process has been successful in California.

Ecology should allow more cost-effective ways of metering non-residential charging.

A solution that we have not seen adopted elsewhere would be for Ecology to not require each fuel supply equipment (FSE) used in non-residential charging (or charging forklifts, airport ground support equipment, cargo handling equipment, ocean-going vessels, and fixed guideway systems) to have its own meter. Instead, it appears that Ecology is not offering this flexibility in the draft CFP.[iii] We have found that utility customers want the option of lower cost solutions in LCFS, such as having a row of chargers metered. In addition to specifically allowing for metering a group of chargers and level 2 EV supply equipment, the final CFP should also be flexible to meet the needs of site hosts, and to allow metering options such as sub-metering, meter data disaggregation, vehicle telematics and load-management hardware.

CalETC opposes having two different entities be the second-in-line credit generator for non-residential credits.

The draft CRP states, "If the owner *or service provider* [emphasis added] of the electric-charging equipment does not generate the credits, then an electric utility or its designated aggregator may generate the credit, if the two entities agree by written contract that…" Later, the term "service provider" again appears in the list of entities that must elect not to generate credits before the backstop aggregator can claim credits.[iv]

The inclusion of this language appears to be inadvertent. However, if it is intentional, we recommend it be deleted for several reasons. First this approach of having competing entities for the second-in-line credit generator is not used elsewhere in the draft CFP. Second, it creates confusion and likely results in dueling claims, which not only creates problems for Ecology but may also result in no one earning the CFP credit. Additionally, a service provider for chargers and level 2 EV supply equipment can mean many different types of services and business models, each with a different definition. We believe it is too late in the process to develop a definition as this should require workshops or some type of public input. If Ecology wants an alternative solution, we recommend making the service provider the third-in-line credit generator for non-residential credits in the final CFP.

CalETC supports the owner of the FSE being the first-in-line credit generator for non-residential credits.

While we oppose (see above) Ecology's definition of residential and non-residential, we do support making the owner of the electric charging equipment first in line to generate credits for non-residential credits such as fleets, workplaces, and public access charging.[v] This term is essentially what is used in California, allows many types of business models, and is appropriately flexible. For example, in commercial settings, the owner of the charging equipment could be the property owners, the tenant at the property, or the charging network operator. The lesson learned from California is that this flexibility works well, as long as there is a second-in-line credit generator, and the draft CFP has this credit generation hierarchy.

CalETC recommends annual updates to electricity carbon intensity by using guidance documents and data that is no more than three years old.

Another lesson learned from California is that electricity carbon intensity data should be updated every year using recent data from a credible source. This is best done with a guidance document as rulemakings are not frequent enough. In California, this is done via annual guidance document for the statewide average, but in Washington this should be done for both the statewide average electricity carbon intensity and the utility-specific carbon intensity in Table 10.

CalETC supports the capacity credit provisions in the draft CFP but recommends two changes.

The hydrogen refueling infrastructure (HRI) capacity credit provision clearly allows light-, medium-and heavy-duty vehicles to use the hydrogen station and this is a much-needed innovation that California is contemplating but has not enacted. However, it is not clear if this is allowed for DC fast charge capacity credits too. If this was not intended by Ecology, then we recommend that the final CFP should specifically and clearly allow this for DC charging plazas too.

Second, we believe that the kg per day and kW per day caps on hydrogen stations and charging plazas are much too low and should be raised to improve the business case. At minimum, these limits should be raised in the final CFP to match what is in California's LCFS: 2,500 kW per day for a charging plaza, with the ability to request up to 6,000 kW per day on a case-by-case basis for electricity and 1,200 kg per day for hydrogen refueling.[vi] Ecology likely should raise these limits, perhaps in later years or later rulemakings, to accommodate the needs of medium- and heavy-duty fuel cell and electric trucks, which need much higher limits as compared to the LCFS rule which was designed only with light duty DC fast charging and hydrogen refueling in mind.

CalETC supports not having verification of fuel transaction reports for electricity.

In the LCFS, third-party verification of fuel transaction reports is not required for electricity, and the draft CFP appropriately follows the LCFS. The final rule should also be clearer that third-party verification is not required for current or subsequent versions of Table 10 on utility-specific carbon intensity.

CalETC recommends the final CFP create several processes to minimize unclaimed credits for electricity.

California has a process for allowing the regulator to provide estimated forklift credits to electric utilities in order to prevent unclaimed credits.[vii] We recommend that Ecology also adopt this process in the final CFP, but also expand it to include other types of electric CFP credits including charging of airport ground support equipment, non-residential use cases, electric cargo handling equipment, electric truck refrigeration units, and other types of electric credits. In California, the details of this process are handled through guidance documents, and the electric utilities provide detailed comments on the estimation methodology. We suggest this same process for Ecology. CalETC believes that the estimation methodology, using California as a model and best available data for Washington, should estimate the number of units in operation and their kWh per year, and then subtract out credits claimed by first-in-line and second-in-line credit generators. The estimated credits should then be provided to the electric distribution utilities.

Another important method for avoiding unclaimed credits and stimulating electric transportation development into new end uses is for Ecology to create, in the final rule, a conservative, default Energy Economy Ratio (e.g., 2.0) that electric end-uses can elect to use. Adding this provision will motivate end uses such as electric recreational boats, electric agricultural mining and logging equipment, electric sweepers/scrubbers, electric tow tractors, electric planes, electric locomotives and other electric off-road or marine equipment to participate in the CFP and to seek a higher Energy Economy Ratio specific to their end use in a future rulemaking. Adding this provision is a matter of fairness, as competing low-carbon fuels in these end uses can earn credits, but electric versions cannot due to lack of an Energy Economy Ratio.

CalETC recommends that every type of electric end-use have a second-in-line credit generator.

We recommend that the final CFP allow the first-in-line credit generator the ability to designate another party to be the credit generator through contractual agreement. It appears to be an oversight, but not every electric end-use has this option in the draft CFP (e.g., electric cargo handling equipment and electric fixed guideway systems).[viii] California has second-in-line credit generators and adding this important detail will help improve the final CFP.

CalETC recommends changing the first-in-line credit generator for electric truck refrigeration units (eTRUs) and electric cargo handling equipment (eCHEs).

CARB staff has proposed in a 2020 workshop[ix] that the first-in-line credit generator for e-TRUs and eCHEs should be the owner of the charging equipment, and CalETC agrees. The draft CFP has the first-in-line credit generator as the owner of the eTRU and the owner of the eCHEs. However, in order to electrify this industry, the obstacle is lack of charging at each site the trucks with eTRUs visit, as there are many sites as compared to trucks. So, addressing the need to electrify the sites is more important than electrifying the eTRU on the truck. We recognize that this is a classic chicken-and-egg problem, and tools other than the CFP may be needed in the

long-run in order to ensure the adoption of eTRUs and supporting charging equipment. However, we believe that establishing the charging equipment owner as the first-in-line credit generator is likely the right place to start, based on our experience in California and the recommendation of CARB staff.

CalETC recommends adding more clarity regarding utility expenditure reporting.

Based on lessons learned from LCFS guidance document 20-3, we recommend that the rule add that not just spending should be reported but spending and allocations.[x] Utilities may need to partner with community-based organizations or state agencies on equity programs and these projects may only have their funds allocated and not fully spent in a given year. Also, only credits that have been monetized in the prior year can be reported.

Thank you for your consideration. CalETC looks forward to working with staff on this important regulation.

Regards,

Laura Renger, Executive Director
California Electric Transportation Coalition

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[i] Draft WAC 173-424-540(3)(b)
[ii] Draft WAC 173-424-420(3)
[iii] WAC 173-424-300(1)(g)(iii)(C)
[iv] Draft WAC 173-424-220(3)(b) and Draft WAC 173-424-220(11),
[v] Draft WAC 173-424-220 (3)(a)
[vi] LCFS section 95486.2 b)2)E) and section 95486.2 a)2)F)
[vii] LCFS section 95483 c)4)b)3.
[viii] Draft WAC 173-424-220 (4) and 173-424-220 (7)
[ix] https://ww2.arb.ca.gov/sites/default/files/2020-10/101420presentation_carb.pdf, page 29.
[x] https://ww2.arb.ca.gov/sites/default/files/2022-03/lcfsguidance_20-03_2022-01-13_ADA.pdf and https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fww2.arb.ca.gov%2Fsites%2Fdefault%2Ffiles%2F2022-03%2FElectricity%2520Credit%2520Proceeds%2520Summary%2520Reporting%2520Template%25202022-03-12_ADA.xls.xlsx&wdOrigin=BROWSELINK