



August 31, 2022

Via Electronic Filing

Department of Ecology
State of Washington
P.O. Box 47600
Olympia, WA 98504-7600

RE: NW Energy Coalition’s comments regarding the proposed Clean Fuels Program Rule, Chapters 173-424 WAC

Dear Rachel Assink:

The NW Energy Coalition (“NWECC” or “Coalition”) respectfully submits the following comments regarding the proposed Clean Fuels Program (“CFP” or “Program”) rule, released July 18, 2022.

The Coalition is a public interest nonprofit that focuses on clean energy issues in the Northwest. As an alliance of more than 100 organizations, the Coalition’s work focuses on energy efficiency, renewable energy, fish and wildlife preservation and restoration in the Columbia basin, low-income and consumer protections, and informed public involvement in building a clean and affordable energy future. We have participated in Oregon CFP rulemakings and continue to provide input on Oregon investor-owned utility CFP reinvestments. NWECC submitted initial comments on the Washington CFP rulemaking on December 22, 2021, additional comments on April 25, 2022, and signed on to joint comments submitted November 17, 2021; March 14, 2022; and August 31, 2022.

A Clean Fuels Program is intended to reduce the carbon intensity (CI) of transportation fuels, but can be designed to also help reduce air pollution, increase access to low-CI fuels, and directly benefit overburdened communities. To maximize the benefits of the program, we support Ecology’s proposed carbon intensity trajectory that would require a 20% reduction in carbon intensity of fuels to be achieved by the earliest date allowed in the law—2034. Our comments highlight key components of the proposed rule and areas that warrant additional consideration, as detailed below.

I. WAC 173-424-110 Definitions

Defining disproportionately impacted communities is necessary to implement RCW 70A.535.080 and can be used to more equitably assess the benefits and burdens of the CFP. While the term disproportionately impacted communities is not often used in Washington law, it is intended to identify communities experiencing a disproportionate share of environmental health burdens that will need more assistance to reach equitable outcomes. Terms more commonly used in Washington to identify these communities include “overburdened communities” as defined in RCW 70A.02.010 as well as “highly impacted communities” as defined in RCW 19.405.020. The proposed CFP rule currently defines disproportionately impacted communities as “communities that are identified by the department of

health pursuant to chapters 70A.02 and 19.405 RCW.” We feel this definition might inadvertently suggest the need for specific action from the Department of Health, and could be amended to provide more clarity. Specifically, we recommend Ecology amend this definition to:

(49) "Disproportionately impacted communities" has the same meanings as “overburdened community” as defined in RCW 70A.02.010 communities that are identified by the department of health pursuant to chapters 70A.02 and 19.405 RCW.

When seeking to target benefits, reduce burdens, and monitoring the impact of the CFP, it’s important to not only define a geographic area, such as a disproportionately impacted community, but to also define the populations that experience a disproportionate cumulative risk from environmental burdens within a geographic area. For this reason, we recommend adding the following definition for vulnerable populations:

“Vulnerable populations” has the same meaning as defined in RCW 70A.02.010.

We will expand on our recommendation to make use of the term, vulnerable populations, in our comments regarding the backstop aggregator, WAC 173-424-220(11), and specific reporting requirements, WAC 173-424-420.

Lastly, we've provided input on a few remaining items within WAC 173-424-110.

- NWECC recommends removing the definition for “single-family residence,” WAC 173-424-110(127), as the term is not used in the CFP rule.
- We support the definition for “unbundled renewable energy credit,” WAC 173-424-110(142), and “unspecified source of electricity,” WAC 173-424-110(145), as it aligns with the use of these terms for the purpose of implementing the Clean Energy Transformation Act (CETA), and accounts for transmission losses.

II. **WAC 173-424-220 Designation of fuel reporting entity for electricity**

WAC 173-424-220(3) Nonresidential electric vehicle charging

NWECC generally supports the credit claiming hierarchy for nonresidential electric vehicle charging, specifically that the owner of the electric vehicle charging equipment has the first right to nonresidential electric vehicle charging credits, followed by electric utilities. However, we offer the following input regarding WAC 173-424-220(3).

- NWECC recommends removing “service provider” from WAC 173-424-220(3)(b). The term is not used in WAC 173-424-220(3)(a) and if a service provider is the owner of the equipment, then they are already eligible to generate credits pursuant to WAC 173-424-220(3)(a). If the service provider is not the owner, the utility should be next to claim the credits as the credit revenue can be expected to offset program costs or reinvested on behalf of customers.
- We request that Ecology clarify whether the term “designated aggregator” within WAC 173-424-220(3)(b)(i) should instead say “designated entity,” consistent with the use of “designated entity” within WAC 173-424-220(3)(b)(ii).

- Lastly, we urge Ecology to add a role for the backstop aggregator to claim nonresidential electric vehicle charging credits if the electric utility does not claim the credits. Adding a role for the backstop aggregator within WAC 173-424-220(3) will help ensure all nonresidential electric vehicle charging credits are claimed.

WAC 173-424-220(10) Residential electric vehicle charging

NWEC strongly supports the credit claiming hierarchy for residential electric vehicle charging base credits, WAC 173-424-220(10)(a), for the reasons outlined in previous comments.¹ However, we have several concerns regarding the credit claiming hierarchy for residential electric vehicle charging incremental credits, WAC 173-424-220(10)(b). Specifically, it is premature to differentiate claims on residential electric vehicle charging incremental credits based on whether the EV charging is metered or nonmetered. This could result in significant administrative burdens, including multiple claims on incremental credits for metered residential EV charging that Ecology would then have to reconcile. To reduce confusion and streamline the credit generation process, we recommend adopting a credit claiming hierarchy for residential electric vehicle charging incremental credits that aligns with Oregon's CFP.² This would result in the electric utility having first priority and the backstop aggregator having second priority.

Lastly, allowing "any other entity" to have third priority to claim incremental credits for residential electric vehicle charging does not establish sufficient guidance or accountability. We recommend removing WAC 173-424-220(10)(b)(iii)(C) in its entirety.

WAC 173-424-220(11) Backstop Aggregator

NWEC appreciates that Ecology incorporated eligibility requirements and an approval process for the backstop aggregator that aligns with those under the Oregon CFP.³ This is a strong foundation for establishing a backstop aggregator and we offer three additional recommendations for Ecology's consideration.

First, disproportionately impacted communities are referenced three times under WAC 173-424-220(11). As detailed in our comments regarding the definitions, it's essential to target benefits not just to geographic areas but to the populations that experience a disproportionate cumulative risk from environmental burdens. To incorporate this practice into the CFP, we recommend Ecology further clarify the means to provide direct benefits to targeted populations and specific geographic areas by incorporating the term vulnerable populations. This would be reflected at each location where disproportionately impacted communities are referenced by using the language below:

¹ NW Energy Coalition's comments regarding the Clean Fuels Program Rule, Chapters 173- 424 WAC, draft rule language (April 25, 2022), available at https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did1008/pid_202037/assets/merged/i806in3_document.pdf?v=HYWNMCQJ8

² OAR 340-253-0330(11)(b)

³ OAR 340-253-0330(10)

“directly benefit[ed] vulnerable populations and disproportionately impacted communities”

Second, we recommend deleting the term “service provider” from WAC 173-424-220(11). Service providers are not directly listed as entities eligible to claim credits and are instead referenced in front of the next priority entity, creating more confusion. Removing the term “service provider” is consistent with our recommendation to remove the term from WAC 173-424-220(3)(b).

Third, there will be a process to approve the backstop aggregator, which could be delayed depending on Ecology’s capacity to review applications. It's important that the backstop aggregator be eligible to claim credits starting with the beginning of the CFP. We recommend adding language to WAC 173-424-220(11) to ensure the backstop aggregator is eligible to claim credits beginning January 1, 2023.

III. **WAC 173-424-300 Registration**

NWEC understands there may be interest in augmenting the term fueling supply equipment as it’s used in WAC 173-424-300(1)(g)(iii)(C) to allow for equipment capable of measuring the electricity dispensed from EV charging by means of; utility metering (for meters with only chargers), utility meter data disaggregation, load-management hardware between the utility meter and EV chargers, and vehicle telematics/fleet telematics software. Additional means of measuring electricity can help leverage existing infrastructure, such as Advanced Metering Infrastructure (AMI), and support lower cost data collection. For these reasons, NWEC is open to this recommendation if the alternative measuring equipment is vetted for accuracy. Additionally, we encourage Ecology to consider who owns or has access to the data collected through these additional means in order to avoid establishing a significant market advantage for any one entity.

IV. **WAC 173-424-420 Specific reporting requirements**

WAC 173-424-420(3)(b) For nonmetered residential EV charging

WAC 173-424-420(3)(b)(i) requires electric utilities to report quarterly on the daily average EV electricity use data for the calculation of credits for nonmetered charging. This raises several questions. For example:

- Why is this data needed quarterly if Ecology issues credits semi-annually?
- If this is nonmetered charging, how does Ecology expect utilities to calculate the daily average EV electricity use?

Due to these outstanding questions, NWEC is uncertain this reporting will add value and instead encourages Ecology to consider deleting a portion of WAC 173-424-420(3)(b)(i), starting at “within” and ending at “quarter.”

WAC 173-424-420(3)(b)(ii) requires electric utilities to provide the VIN for each electric vehicle claimed and evidence of EV vehicle registration and low-carbon electricity supply at the same location in order to claim incremental credits for nonmetered residential charging. To our knowledge, this is not a requirement under the Oregon CFP and we are concerned that this may create significant barriers for electric utilities to generate incremental credits for nonmetered residential charging. So much so, that it

could effectively bar electric utilities from generating incremental credits. We recommend removing WAC 173-424-420(3)(b)(ii) in its entirety.

Lastly, we wanted to express our support for the requirements outlined in WAC 173-424-420(3)(b)(iii). Provisions such as this help create a virtuous cycle of investments to accelerate transportation electrification.

WAC 173-424-420(7) Annual reporting of electric utility credit revenue

The reporting requirements outlined in WAC 173-424-420(7) are a helpful start but fall short of meeting the directives of RCW 70A.535.080. The enabling legislation specifically requires "30 percent of the revenues generated by an electric utility from credits earned from the electricity supplied to retail customers by an electric utility under the clean fuels program, must be expended by the electric utility on transportation electrification projects [...] located within or directly benefiting a federally designated nonattainment or maintenance area, a federally designated nonattainment or maintenance area that existed as of January 1, 2021, a disproportionately impacted community identified by the department of health, or an area designated by the department as being at risk of nonattainment." Electric utility credit revenue reporting should include a description of how the electric utility is, at a minimum, complying with RCW 70A.535.080. Specifically, we recommend the following language be added to WAC 173-424-420(7)(b):

[A description of programs or projects, developed and implemented in coordination with local environmental justice advocates, local community-based organizations, and local municipalities, that promote transportation electrification and provide direct benefits to vulnerable populations and disproportionately impacted communities.](#)

[The total amount and percentage of total revenues spent on programs and projects that provide direct benefits to vulnerable populations and disproportionately impacted communities.](#)

Lastly, we were disappointed to see Ecology removed the requirement for electric utilities to report their efforts to minimize adverse impacts to the electrical grid. We recommend reincorporating this language under WAC 173-424-420(7), consistent with our recommendation from our comments submitted April 25, 2022.⁴

V. WAC 173-424-540 Calculating credits and deficits

WAC 173-424-540(2) Calculation method for fixed guideway vehicles and electric forklifts

We do not believe that fixed guideway systems built before or after a certain date should be treated differently under the Program. We are not familiar with other fuels that are treated differently based on

⁴ NW Energy Coalition's comments regarding the Clean Fuels Program Rule, Chapters 173- 424 WAC, draft rule language (April 25, 2022), available at https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did1008/pid_202037/assets/merged/i806in3_document.pdf?v=HYWNMCQJ8

when they are placed in service. We recommend allowing fixed guideway systems to generate the full number of credits they are eligible for regardless of when they are placed in service.

WAC 173-424-540(3) Residential electric vehicle charging

NWEC appreciates that direct metering is not a requirement to generate residential credits. We have not seen evidence that a nonmetered approach is inaccurate and unfortunately, we foresee direct metering pathways being overly burdensome for Ecology and participating entities. We understand Ecology is striving for the highest degree of accuracy for the Program and we support WAC 173-424-540(3)(c) to allow for any necessary true-up in the event of a significant error.

Credit calculations based on the total electricity dispensed, as measured through direct metering, is one area of the Program that warrants additional consideration and in the near term, we strongly recommend aligning with the Oregon CFP methodology to generating residential credits. Therefore, we support the methodology introduced in WAC 173-424-540(3)(b)(i) and encourage Ecology to consult stakeholders in the development of subsequent guidance related to calculating residential electric vehicle charging credits.

WAC 173-424-540(4) Incremental credits

WAC 173-424-540(4) is the only time the term “incremental aggregator” is used. To clarify the eligibility requirements and approval process for the incremental aggregator, we recommend establishing that the incremental aggregator shall be subject to the same requirements as outlined in WAC 173-424-220(11) and that the backstop aggregator is eligible to act as the incremental aggregator.

VI. WAC 173-424-550 Advance crediting

The advanced crediting provisions outlined in WAC 173-424-550 are an improvement from the proposal included in previous draft rule language. However, the advance crediting provisions still raise concerns about the integrity of the program if this approach is included in the final rule. Advanced credits should be reserved for: (1) projects that would not happen if it were not for receiving advanced credits; (2) projects that use fuels that are on a clear path to a CI of zero (electricity under Washington’s Clean Energy Transformation Act); and, (3) are sponsored by a reliable public entity or an entity under contract with a public entity. To better align with the above principles, we recommend Ecology:

- Amend WAC 173-424-550(2)(b)(i) to:
 - (i) Electrification of medium and heavy-duty vehicles;
- Remove WAC 173-424-550(2)(b)(iv) in its entirety.

Lastly, NWEC supports the overall limitation of advance credits outlined in WAC 173-424-550(8). We encourage Ecology and the Washington State Department of Transportation (WSDOT) to seek public input on the development of advanced credit application criteria.

VII. **WAC 173-424-560 Generating and calculating credits for ZEV fueling infrastructure pathways**

NWEC has significant concerns that infrastructure credits will compromise the integrity of the CFP given that an infrastructure credit does not equal one metric ton of carbon dioxide equivalent less than the applicable standard adopted under RCW 70A.535.020. We recommend removing WAC 173-424-560 in its entirety. If Ecology chooses to move forward with infrastructure credits, we request Ecology:

- Review projects to evaluate the potential impacts to vulnerable populations and disproportionately impacted communities and create a process to address those impacts if they are identified;
- Establish a minimum uptime requirement for DC fast charging infrastructure to increase reliability of DC fast chargers;⁵
- Establish overall limitations on ZEV fueling infrastructure pathways that would take effect in the scenario that there is a significant surplus of credits resulting in deflated credit prices; and,
- Plan to phase out ZEV fueling infrastructure pathways.

VIII. **WAC 173-424-630 Determining the carbon intensity of electricity**

WAC 173-424-630(1) Utility-specific electricity mix and (2) Statewide electricity mix

It is our understanding that Ecology intends for utilities to solely use the utility-specific electricity mix established under WAC 173-424-630(1). While we support the requirement for utilities to use the utility-specific electricity mix, the rules do not appear to make this explicitly clear. NWEC recommends:

- Ecology clarify that utilities must use the utility-specific electricity mix; or,
- If a utility is able to opt-in to the statewide electricity mix, Ecology must exclude the energy and emissions related to utilities that are using a utility-specific electricity mix from the statewide electricity mix.

WAC 173-424-630(5) Offsite renewable electricity

NWEC does not support the use of offsite renewable electricity through the purchase and retirement of renewable energy certificates (RECs) solely to demonstrate a lower CI under the Washington CFP. We support the generation of incremental credits through co-located or on-site renewable electricity generation, smart charging, and utility renewable electricity products and power purchase agreements. Our preference is for Ecology to remove all references to the purchase and retirement of RECs solely to demonstrate a lower CI than the statewide or utility-specific electricity mix. If Ecology retains the use of RECs, we strongly recommend a deliverability requirement in addition to the vintage requirement. To increase local benefits, we recommend WAC 173-424-630(5)(c) be amended to:

RECs must be generated from facilities located in the Western Electricity Coordinating Council associated with electricity that is generated within a balancing authority area that includes a portion of the state of Washington, as recognized by the North American Electric Reliability

⁵ Consider “minimum uptime” requirements from the National Electric Vehicle Infrastructure Formula Program Proposed Rule, available at <https://www.regulations.gov/document/FHWA-2022-0008-0001>

Corporation, or that the electricity from the generating facility is delivered to one of those balancing authorities on a real-time basis without shaping, storage, or integration services; and

A deliverability requirement would also help address some concerns related to the double counting of non-power attributes. NWECC explains concerns related to double counting in comments submitted December 22, 2021.⁶ Essentially, our comments emphasize that there is a risk that the non-power attributes associated with a specified sale of a renewable resource to California could be used to claim a lower CI resource under both California's Cap-and-Trade Program and the Washington CFP. This constitutes double counting and there may be additional scenarios that would result in double counting as states increasingly rely on the use of RECs within voluntary and mandatory clean energy programs. For these reasons, we urge Ecology to develop additional guidance that will reduce the risk of double counting.

IX. Additional Guidance Documents

After the CFP rules are adopted, Ecology will need to issue subsequent guidance to support implementation and participation in the CFP. While there are no specific requirements for a public process, we strongly encourage Ecology to seek stakeholder input on the development of guidance. In particular, RCW 70A.535.080 requires Ecology and WSDOT to jointly develop a list of transportation electrification programs or projects. Utilities must then reinvest 50 percent of their revenue on programs and projects identified in this list. As Ecology works to develop this list, we recommend:

- Consulting with the Department of Commerce and Washington Utilities and Transportation Commission to ensure the programs and projects complement existing transportation electrification work and align with utility transportation electrification plans and programs;
- Engaging stakeholders, particularly public interest organizations, in the development of the list; and,
- Considering California's Holdback Credit Equity Projects list to inform Washington's transportation electrification programs or projects list.⁷

The development of guidance documents is an essential next step to support the Washington CFP. Many details not addressed in the rules will be explained in these guidance documents. As the rules rely on this additional guidance, we urge Ecology to seek input and support public participation in the development of subsequent guidance documents.

X. Conclusion

We want to reiterate our support for a carbon intensity trajectory that would require a 20% reduction in carbon intensity of transportation fuels by 2034. NWECC appreciates Ecology's work to establish Washington's CFP and we look forward to providing feedback on the development of subsequent guidance.

⁶ NW Energy Coalition's comments regarding the Clean Fuels Program Rule, Chapters 173- 424 WAC, draft rule language (December 22, 2021), available at https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did1008/pid_202037/assets/merged/rx0oiny_document.pdf?v=WASGFK58J

⁷ California's Low Carbon Fuel Standard Regulation, § 95483(c)(1)(A)6.a., titled "Holdback Credit Equity Projects."

Thank you for your consideration of the NW Energy Coalition's comments.

Respectfully submitted,

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