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August 31, 2022

Rachel Assink
Department of Ecology
Air Quality Program
Olympia, WA 98504-6700

Re: Chapter 173-424 WAC – Clean Rules Program Rule – Comments of Avista Utilities

Dear Ms. Assink,

Avista Corporation, dba Avista Utilities (Avista), submits the following comments in accordance with the Department of Ecology's proposal notice CR-102 on July 18, 2022, relating to the Clean Fuels Program (CFP).

Avista appreciates the work of Department of Ecology Staff to develop rules to implement the CFP. We recognize that the development of complex rules under a challenging timeline has not been an easy process. Avista believes the draft rules will effectively leverage the expertise and innovation of utilities to advance the deployment of technologies to support reduced emissions in the transportation sector, which is critical to achieving the state's emission reduction goals.

Avista is an investor-owned utility providing both gas and electric service across a sizeable geographic footprint in Washington. As a provider of clean, affordable energy for more than 133 years, we are excited about the opportunities presented in this rule to promote the decarbonization of transportation fuels through the energy solutions and services we provide.

First, we should note that Avista is a signatory to the "Joint Utility" comments being submitted in response this CR 102. We support in their entirety the comments presented in the Joint Utility submission. And as mentioned above, we are generally supportive of the proposed rule and appreciate the work of staff in crafting a rule that will result in successful implementation of the Clean Fuels Program.

In addition to the points made in the Joint Utility letter, the following comments are provided by Avista as constructive improvements to this lengthy and complex rule and to seek clarification in certain provisions, in order to help streamline and effectively implement the program.

WAC 173-424-110 (84) (b) – The definition of "Importer" is appropriately included to identify the party that is responsible for bringing liquid or gas fuel into the state for use as a transportation fuel. WAC 173-424-110 (84) (b) reads:

> *(b) With respect to any biomethane, the person who owns the biomethane when it is either physically transported into Washington or injected into a pipeline located outside of Washington **and delivered** for use in Washington. (emphasis added).*

We propose to strike the words "and delivered" from this definition. Biomethane can be procured and injected at any number of points in a broad geographic area that make up the region's pipeline infrastructure. While this lower carbon gas can displace conventional fuel in the interconnected pipeline system, it is impossible to know where the molecules travel along the pipeline. The use of the biomethane is assigned to the party who has contractual ownership of the biomethane. Therefore, contractual ownership of the gas and its environmental attributes for use in Washington should be sufficient to determine who is the importer.

WAC 173-424-220 – This section establishes the hierarchy for parties that generate credits for electricity used for various purposes as a transportation fuel. In each case, except two, the primary credit generator can designate another entity to be the credit generator. The two exceptions are credit generating provisions in subsection (5) for fixed guideway systems and subsection (6) for electric ground support equipment. We would request language be added to these subsections allowing transit agencies operating fixed guideway systems and the owner of charging equipment for ground support equipment to designate another entity to be the credit generator. Absent this addition, it is possible that valid credits will go unclaimed that could otherwise be generated and reinvested in electrification infrastructure.

Subsection (3) (b) of this section of the rule provides that if the owner or service provider of nonresidential electric vehicle charging equipment does not generate credits, an electric utility or its designated aggregator may generate the credits if the "two entities agree by written contract…" While Avista supports this provision, we do not believe a written contract between the utility and the owner or service provider is necessary. We believe it is sufficient for the owner or service provider to merely provide a written statement that they do not intend to claim the credits associated with this equipment. Such a statement would then effectuate the utility's rights to claim those credits and could conversely be rescinded by written notice that the equipment owner or service provider intends to claim the credits in the next reporting period. This would help reduce considerable administrative burdens associated with negotiating legal contracts, and result in more effective utilization of credits that would otherwise remain unclaimed.

Avista would also suggest eliminating the term “service provider” throughout this section since it is undefined and is unclear what type of entity would fall into the category of a service provider.

Parts 3 and 4 – Registration, Recordkeeping and Reporting – The registration, recordkeeping and reporting requirements in the draft rule are labor intensive and we believe Ecology should look for opportunities to streamline these provisions to reduce costs for regulated entities, credit generators and the agency. Specifically, we believe many of the requirements under 173-424-420 (3) – Specific reporting parameters for electricity used as a transportation fuel – could be eliminated.

For example, the rules require vehicle identification numbers (VINs) as part of the registration process for entities charging electric vehicles and for generating incremental credits for metered residential EV charging. This will require a substantial amount of work to gather, record and report each VIN, which does not seem necessary and should be eliminated.

Avista would also request Ecology consider semi-annual reporting, rather than quarterly reporting for registered parties. Semiannual reporting would be consistent with WAC 173-424-540 (3) which calls for credits to be issued to the WFRS account of utilities at least twice per year.

WAC 173-424-560 (1) and (2) – These sections of the rules set parameters for earning credits from hydrogen refueling (HRI) and DC fast charging infrastructure (FCI). The rule caps credits for each of these activities to 2.5 percent of deficits in the most recent quarter.

Additionally, the rule limits the HRI crediting to 15 years while limiting credits for FCI to five years from the time an application is approved. Avista requests that Ecology clarify the purpose for these limitations and the outcomes it is seeking to achieve. FCI installed in the coming years will be contributing to CFP goals throughout the useful life of the equipment and should be eligible to earn credits as long as it is contributing to the statutory carbon intensity reductions.

This section of the rule limits total nameplate power ratings for FCI at a single site to 1,500 kw with the option of applying for equipment totaling 3,600 kw at a single site. Avista notes that this is different than California which has a single-site limit of 2,500 kw with the opportunity to apply for single side nameplate power rating up to 6,000 kw. Avista would be interested to know why Ecology set the single-site power rating limits at a lower threshold than California.

The rule also limits credits generated in each quarter to the capital expenditures made in each quarter minus any grants or other funding reported. Capital expenditures are typically made in large upfront sums, not spread out over the life of the equipment. This provision of the rule would limit the ability to earn credits while equipment owners will continue to incur administrative, energy and maintenance costs over the equipment’s useful life. Avista would propose eliminating this limitation on FCI credits generated. If such a limit is included in the final rule, we would propose that a utility be allowed to amortize its capital expenditures over the credit generating period allowed for this infrastructure. This would permit credits to be generated throughout the period and not just in a quarter subsequent to when a capital expenditure is made.

WAC 173-424-630 (3) – This section lays out the methodology for determining the carbon intensity of electricity. Subsection (3) states that unspecified electricity shall be assumed to be generated using natural gas. Natural gas generation can occur at a variety of emission rates, depending on the age and type of equipment. Additionally, this approach is inconsistent with the definition of "unspecified source of electricity" in section 110 (124) of the rule, which assigns an emissions rate of 0.437 metric tons per megawatt-hour. This is a more clear and precise method of assigning an emissions rate to unspecified electricity and Avista recommends subsection 630 (3) be consistent with the definition for "unspecified source of electricity."

WAC 173-424-630 (5) (a) – This section states that unbundled RECs used to reduce carbon in electricity must be certified at the wholesale level while RECs derived from the power purchase agreement may be certified at a retail level. It is unclear what is meant by wholesale and retail certification. Avista is not aware of any such distinction in any Washington statute. As in other areas of Washington law and as prescribed elsewhere in the rule, any renewable energy credit certified by the Western Renewable Energy Generating Information System (WREGIS) should be deemed valid under the program

Table 10 – Avista strongly supports the provisions that allow a utility to use either the statewide average or utility specific carbon intensity values for the purposes of calculating credit generated for electric vehicle charging. However, Avista believes the utility-specific carbon intensity assigned to its generation mix is inaccurate. According to the rule, the carbon intensity calculation is based on the fuel mix report prepared by the Department of Commerce as required under RCW 19.29a.140. The report is based on data submitted by utilities of their fuel resource mix. In conversations with agency staff, the discrepancy may be a result of using outdated fuel mix data submitted in 2018 since more recent data may not have been available when the Ecology contractor made the calculations reflected in the rule. It appears more recent data has since been made available and Avista proposes that Ecology use the most recent fuel mix data for establishing the initial utility-specific carbon intensity values in the proposed rule. We also support updating this calculation annually to reflect the most recent and therefore the most accurate values for utility-specific carbon intensity.

Avista appreciates the opportunity to collaborate with Ecology and interested stakeholders on the development and refinement of the CFP rule. Please direct any questions regarding these comments to me at 509-495-2832 or rendall.farley@avistacorp.com.

Sincerely,

/s/Rendall Farley

Rendall Farley
Manager of Electric Transportation