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December 13, 2024

Adam Saul, CFS Rule Lead
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

RE: 3Degrees comments in Response to Updated Draft Rule Language Proposed for the Washington Clean Fuel Standard (CFS)

Dear Adam Saul and CFS Team,

3Degrees Group, Inc. (3Degrees) appreciates this opportunity to submit comments to the Department of Ecology (Ecology) on the forthcoming amendments to the CFS rule.

3Degrees is a global climate and clean energy solutions provider and is a strong supporter of the CFS program. We participate in the program as a designated reporting entity on behalf of a variety of opt-in parties with light-duty electric vehicle chargers, electric forklifts, hydrogen forklifts, and heavy-duty EV fleets. We are also an active fuel pathway developer.

We offer the following comments in response to the draft regulation published on November 26, 2024.

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For renewable electricity reported using book-and-claim, 3Degrees is supportive of incorporating a commercial operations date (COD) requirement in the CFS to address additionality, so long as the geographic boundary is not overly limiting.

We assert that Ecology's proposal to add an additionality provision without overly restricting renewable energy credit (REC) resources can be accomplished by establishing a minimum COD for facilities from which RECs are sourced to be matched with EV charging. We believe that the proposed 2019 COD is reasonable considering the relative age of the CFS program and availability of renewable energy resource generation in the region in recent years. A 2019 COD would help to accomplish the stated goal of reducing the use of RECs from older hydroelectricity projects but is sufficiently recent to encourage continuous new development of other technology types through the next phase of the CFS.

That said, as noted in our prior comments, there must be a carve-out for biogas-to-electricity facilities. These facilities are an integral part of the renewable power industry but have significantly different financial and practical considerations than new solar, wind, etc. projects. We recommend a rolling 15-year COD requirement for those facilities to ensure that their significant emission reduction benefits continue to be realized in Washington.

When it comes to addressing regionality, implementing both a COD and a restricted geographic boundary requirement would align too closely with the state's other decarbonization policies and could cause qualifying products to become too scarce in the market while minimizing the benefits offered by book-and-claim accounting. As seen in California where PCC1 RECs and LCFS-eligible RECs are incredibly expensive, creating direct competition with the REC supply eligible under the Energy Independence Act and Clean Energy Transformation Act would increase prices without corresponding benefits for Washington customers whose utility rates are affected by those policies. We recommend that Ecology maintain the geographic requirement in the current guidance, i.e., that RECs must be generated from facilities located in the Western Electricity Coordinating Council (WECC) region. The WECC boundary for book-and-claim electricity generation aligns with Oregon's Clean Fuel Program and still ensures regional benefits.

As mentioned in our previous comments, we support Ecology's decision to implement the more restrictive additionality requirements starting in January 2026. Based on our view of the market, these types of rule changes are most seamlessly implemented with around a year of leeway so that participants have time to understand the new requirements and adjust their procurement relationships accordingly. Assuming the regulatory process remains on schedule, this will provide about a full compliance year post-rule finalization for adaptation.

The proposal to impose a 4x deficit generation penalty for exceeding a predetermined CI score will disproportionately penalize the biogas sector and should be adjusted down.

If this full penalty is enforced, many well-intending pathway operators will observe large swings in performance, particularly in digester-derived fuels processing organic wastes and newly-certified pathway operations that will likely have unavoidably variable CIs.

We recommend a 1x deficit penalty and/or implementing a carve-out for all categories of digester-derived pathways that exceed their certified CI only as a result of organic variability in digester performance.

The threshold to trigger a material misstatement of a CI score through the verification process is too stringent.

Related to the section above, we believe that the threshold for materiality of an error in CI, defined as "more than five percent of the reported operational CI, or 2 gCO2e/MJ, whichever absolute value expressed in gCO2e/MJ is greater," (WAC 173-424-830(2)(i)(2)(D)) is overly restrictive and will result in more punitive measures than Ecology intends to institute. In order to achieve Ecology's stated goal of not issuing harsh penalties for small mistakes, this materiality limit should be set at a rate that takes into account the variability of different pathways. Alternatively, in line with our comments above, Ecology could make a carveout for biogas pathways with a higher threshold for establishing materiality. While we have seen projects with CI score variances of 100 points or more, a 20-point variance may be reasonable in this context.

The weight limits for light-duty vehicle (LD) and medium-heavy duty (MHD) vehicles could unintentionally place charging of common passenger EVs in the MHD category for the purposes of fast-charging and hydrogen refueling infrastructure (FCI/HRI) crediting.

In the draft rule, an LD vehicle is defined as a vehicle that is rated at 8,500 pounds or less GVWR, an MD vehicle is rated between 8,501-14,000 pounds, and an HD vehicle is 14,001 pounds or greater. Ecology has communicated that the intent of the MHD FCI/HRI infrastructure crediting opportunity as a category distinct from LD is to incentivize the construction of specific types of charging facilities in Washington that are necessary to support charging of vehicles that are used for more commercial or public purposes, e.g., delivery trucks. However, the current categorization may unintentionally bar charging networks that serve heavier passenger vehicles, such as certain models of Rivian, Ford, and Tesla trucks from participating in the LD infrastructure pathway. Also, elsewhere in the rule,[1] LD and MD vehicles are treated similarly for the purposes of fuel reporting. We recommend that Ecology adopt CARB's approach to combining the light- and medium-duty vehicle category as separate from heavy-duty vehicles for the purposes of FCI/HRI credits. This more accurately captures the types of charging infrastructure that support each type of vehicle class.

3Degrees would like to express strong support for the proposed third-party verification requirements.

These provisions are for the most part very reasonable and in our view, are the most practical example across the existing clean fuel programs. In particular, we support the application of less-intensive verification of quarterly CFR reports to electricity based transactions types, and the specific allowance that site visits to the entities using an aggregator can be done at the verifier's discretion according to a sampling plan, which resolves the possibility that a verifier would be required to visit thousands of disparate charging stations to verify electricity credits.

Requiring credit generation waiver language in the contract between parties places an operational burden on CFS program participants.

Ecology should include credit generation waiver language in the aggregator designation forms rather than requiring the language added in WAC 173-424-220(3)(c) in the contract between parties. Part of the value aggregators bring their customers is streamlined and standardized contracts and processes between programs, which reduce the cost to serve these clients. Requiring this provision to exist in the contract would reduce this benefit as it would require aggregators to develop a separate contract specifically for entities operating in Washington. We see no benefit to having this provision in the contract as opposed to the aggregator designation form.

A seven day response deadline to provide requested additional documentation prior to FSE registration is unduly burdensome.

This short deadline, especially when an aggregator is involved in providing the requested documentation, could lead to unnecessary denials due to an administrative burden. 3Degrees suggests this deadline be extended to 14 calendar days.

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[1] WAC 173-424-420.

3Degrees suggests that Ecology align the CFS with CARB's LCFS program and adopt hydrogen eligibility similar to CARB's Tier 1 pathway.

The production of hydrogen via SMR and electrolysis are both well-characterized at this point and should be documented as such in a Tier 1 calculator. Especially given the ambitions of efforts such as the Pacific Northwest Hydrogen Hub, we are likely to see a significant number of new low-carbon hydrogen facilities developed in the coming years, and requiring each to go through a full Tier 2 pathway process could create a significant backlog of pathways, delaying project implementation, with little to no benefit to program integrity.

Ecology's suggested treatment of digesters is more likely to increase methane emissions from existing digester facilities in the agricultural sector than to accomplish Ecology's stated goal of incentivizing new and additional methane capture.

Most of Washington's digesters were installed before 2012. Under the proposed avoided methane crediting language, those facilities would have extremely limited windows for participation in the CFS program. Consider, for example, Farm Power Rexville, which was installed in August 2009, and would only be eligible to participate in the CFS program for 1 year.

Digsters in their second decade tend to require infrastructure reinvestments to extend their useful life (for example, new lids). Without the option of long-term participation in the CFS, these facilities are unlikely to receive those reinvestments and are likely to revert to their baseline methane release, counter to Ecology's goals and the intent of the CFS. The proposed language would prematurely strand assets by cutting short the program participation for facilities that at one time expected 10 year crediting periods, twice renewable, for a full 30 years.

Instead, we recommend either extending the crediting period for these existing digesters by removing the language restricting the years of eligibility[2] or by adding a provision to extend the crediting period for dairy or swine manure facilities that undergo a major overhaul or reinvestment in order to prevent the facility from reverting to its baseline manure practices of uncontrolled anaerobic decay of manure in open lagoons.

In general, 3Degrees supports the proposed credit true-up mechanism in the regulations, but Ecology must include some non-liquid fuels in the credit true-up process.

Ecology's stated goal for the proposed credit true-up process is to align the CFS with CARB's and OR DEQ's guidance, but this language fails to allow for true-ups of non-liquid fuels as CARB and DEQ have done. In 2023 these fuels represented at least 23% of the non-electricity credit generation in the California LCFS, meaning they represent a significant portion of the total credit potential from CFS programs. Failing to allow them to participate in the true-up process in the same way as liquid fuels therefore disadvantages a significant source of program credits. We suggest Ecology adopt language mirroring CARB's LCFS credit true-up mechanism.

[2] 173-424-610 (16)(c)(ii)(B).

3Degrees also expresses support for the distinction between Type 1 and Type 2 credit transfers and the one month timeline for Ecology to conduct their Completeness Determination on Tier 1 or Tier 2 pathway applications.

3Degrees appreciates this opportunity to provide feedback and we look forward to continuing to work with Ecology on the development of the CFS. Please reach out with any questions or for further discussion.

Sincerely,

/s/ Lexi Concannon

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