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PACT Comments on Ecology's Clean Fuel Standard Rulemaking Revising Chapter 173-424 of the Washington Administrative Code ("WAC")

I. Introduction

Powering America's Commercial Transportation ("PACT") is pleased to provide these Comments in response to the State of Washington's rulemaking to revise Chapter 173-424 WAC, the Clean Fuel Standard Program. PACT is encouraged to see the Department of Ecology's ("Ecology") focus on medium- and heavy-duty ("M/HD") charging in this rulemaking, demonstrated by Ecology's proposal to expand capacity credits to M/HD fast charging infrastructure ("M/HD-FCI") sites. In these comments, PACT proposes a series of recommendations intended to strengthen the emergent M/HD-FCI crediting program. PACT appreciates the creation of the MHD-FCI program and looks forward to continued engagement with Ecology and Program Staff as the final program is developed.

II. About PACT

PACT is a coalition dedicated to accelerating the development and deployment of reliable nationwide charging infrastructure for medium- and heavy-duty zero emission vehicles ("M/HD ZEVs").[1] Our membership comprises stakeholders across the transportation electrification ecosystem, including leading truck manufacturers, charging infrastructure technology providers and developers, commercial fleets, fleet management companies, and utilities.[2] PACT is committed to promoting productive cross-sector collaboration to advance policies and regulations that improve access to and reduce barriers for M/HD charging infrastructure. PACT engages nationally on matters related to transportation electrification ("TE"), including but not limited to project energization timelines, infrastructure funding strategies, and make-ready

[1] M/HD refers to Class 6 - 8 vehicles, according to the Federal Highway Administration https://afdc.energy.gov/data/10381

[2] PACT membership comprises ABB E-mobility, Amazon, Alpitronic, BC Hydro, Burns & McDonnell, Chateau Energy Solutions, Cummins, Daimler Truck North America, EV Realty, Geotab, Greenlane, InCharge, InductEV, J.B. Hunt Transport, Inc., Mortensen, Navistar Inc., Penske, Pilot Flying J, Pioneer eMobility, PittOhio, Prologis, Voltera, WattEV, Volvo Group North America, and Zeem Solutions.

programs. Such engagement is intended to accelerate the deployment of M/HD ZEVs and its attendant infrastructure.

III. Interest in this Proceeding

PACT is engaging on Washington's Clean Fuel Standard Rulemaking for multiple reasons, including but not limited to its parallel to the California Low Carbon Fuel Standard ("LCFS") Program. In California, PACT submitted comments in response to CARB's April 10, 2024, workshop regarding the proposed LCFS Program Amendments. PACT's comments expressly supported CARB's proposal to create a M/HD-FCI program and provided recommendations for how it may be strengthened to maximize the benefits of the program according to key industry stakeholders. PACT hopes that, in recognition of Ecology's aims to align the Clean Fuel Standard with that of California, PACT's recommendations will be taken into consideration by the Climate Pollution Reduction Program Staff.

Washington has been a leader in TE. The Clean Commitment Act ("CCA") established the goal of reducing greenhouse gas emissions by 95% by 2050. Since passage of the CCA in 2021, Washington has taken additional action in support of that overarching goal, including adoption of Advance Clean Trucks ("ACT") in 2021. The Department of Commerce has made further recommendations regarding M/HD electrification, including calls to expand programs for medium- and heavy-duty trucks,[3] to pursue adoption of Advanced Clean Fleet ("ACF") rates,[4] and to fund and implement a M/HD incentive and infrastructure program.

The Clean Fuel Standard has incredible potential to support TE initiatives in Washington, and the state's overarching climate and clean air goals. Ample charging infrastructure is critical to achieving these goals, including ACT. Moreover, as Washington pursues ACF adoption rates, it is even more imperative that the state puts in place the right balance of regulatory requirements and incentives necessary to accelerate this adoption. The Clean Fuel Standard in particular–especially if adopted with PACT's recommendations provided below–will encourage a transition to M/HD ZEVs and the build out of the necessary charging infrastructure because it will demonstrate the availability of important investment opportunities to key stakeholders.

PACT supports Washington's efforts to align provisions of the Clean Fuel Standard program related to M/HD-FCI with those under development by the California Air Resources Board ("CARB"). Alignment on M/HD-FCI provisions will not only support Washington's clean air, climate, and TE goals, it will also improve cross-regional collaboration and market stability. Furthermore, portions of the I-5 corridor in both California and Washington have been

[3] WA Department of Commerce, *Biennial Energy Report*, pg. 36 (March 2023).
[4] WA Department of Commerce, *Transportation Electrification Summary and Action Plan*, pg. 10 (Jan. 2024)

prioritized as zero-emission freight corridors in Phase 1 of the National Zero-Emission Freight Corridor Strategy.[5] Ensuring alignment of the state's programs will set the region on a strong path towards supporting the eventual electrification of the entire corridor, and will provide industry with the requisite market stability to make the necessary investments today.

IV. Fast Charging Infrastructure ("FCI") Capacity Credits

PACT applauds Ecology's proposal to expand FCI crediting to include provisions specific to the M/HD sector, and believes it is important to underscore the potential impact that such provisions would have on the market. The inclusion of provisions for M/HD-FCI would play a key role in ensuring that additional investments are made in M/HD ZEVs and the requisite charging infrastructure. This will, in turn, send clear market signals to the M/HD sector and its stakeholders that the industry can feel confident that the support needed to advance M/HD ZEVs will be available.

The Clean Fuels Program has the potential to be a paradigm-shifting resource to help Washington meet its electrification targets laid out in the Washington Transportation Electrification Strategy and, more broadly, its goals as a Section 177 partner and stakeholder.[6]

The Staff proposal offers a promising foundation that, with the consideration and incorporation of industry recommendations, PACT believes will help fund M/HD ZEV infrastructure and accelerate the deployment of critical ZEV technologies.

A. Include Private Charging

Under the current program, FCI must be publicly accessible and meet other criteria specified in WAC 173-424-560 to be eligible for crediting. PACT appreciates Staff's plan to extend crediting opportunities to sites shared by multiple M/HD fleets that are not otherwise publicly accessible, including sites open to two or more fleets under separate ownership. PACT strongly believes, however, that the inclusion of private fleet charging sites would vastly expand the potential benefits of this program. Private charging credits are critical to the success of M/HD charging in general as trucks refueling at private depots and trucks refueling at public stations will both need the necessary infrastructure to continue operations. Expanding credits to private charging will help reduce the steep initial costs associated with the buildout of infrastructure and will better

[5] Joint Office of Energy and Transportation, *National Zero-Emission Freight Corridor Strategy* (March 2024)
[6] Washington has adopted California's heavy-duty vehicle regulations under Section 177 of the Clean Air Act. https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/states-have-adopted-californias-vehicle-regulations

align with unique refueling needs of truck fleets. Current operational needs are diverse across M/HD sectors and vary across many use cases and business needs.

Furthermore, with respect to meeting ACT mandates and other environmental improvement objectives, the benefits provided by electric trucks do not depend on whether the charging infrastructure used is public or private. Equal treatment for public and private charging infrastructure will expand the anticipated climate as well as revenue benefits of the Clean Fuel Standard program and incentivize maximum participation.

PACT encourages Staff to consider expanding capacity crediting to private as well as public infrastructure investments and to create parity between the two by equalizing the credits earned for both private refueling infrastructure and public refueling infrastructure, per charging station.

B. Sector-Specific Requirements

Staff states that M/HD-FCI would be subject to sector-specific requirements, including nameplate capacity, number of fuel supply equipment ("FSE") per site, and type of charger required. PACT is receptive to Staff's decision to include sector-specific requirements and offers the following recommendations regarding the potential requirements.

1. Nameplate Capacity

PACT would preemptively caution Staff against requiring a minimum nameplate capacity as FSE providers and fleets should have flexibility to plan for power levels that accelerate the deployment of M/HD EVs at scale, and across diverse market segments. Developers are utilizing a mix of charging speeds at depots to provide customers with the charging option that best fits their needs, potentially including lower power solutions for overnight or long-dwell charging. These charging models may be able to provide a more cost-effective solution for fleets in certain applications. This scenario highlights the need to encourage flexibility so that customers have the options available to choose the right charging model that works for their operational needs. A minimum nameplate requirement would hamper market flexibility, which is critically important for achieving the State's decarbonization and electrification goals.

2. Number of Fueling Supply Equipment ("FSE") Units per Site

To maximize EV charging infrastructure deployment, PACT would encourage Staff not to include a cap on the number of FSE per site. An artificial cap on the number of FSE per site would unduly impede M/HD

charging deployment and run contrary to current market realities, which calls for mass deployment of infrastructure to meet M/HD fleet demands. Developers are currently building and planning sites that vary in size, and customer needs are being met with a variety of FSE configurations. Moreover, fleets are considering the transition of any number of their vehicles to ZEVs and limiting the availability of FSE at sites will only serve as a deterrent to such businesses. PACT encourages Ecology to promote scenarios where very large fleets are supported by a large volume of FSE and would suggest that Ecology not set maximums per site location.

3. Type of Charger

To encourage market diversification and innovative charging solutions, PACT would encourage Staff not to place requirements on the type of charger eligible for crediting. There is currently no industry-wide standard for M/HD charging, and the varied operational demands experienced by the M/HD sector suggest the need for a policy that promotes a diverse array of charging options. The type of charger should be dictated by market needs, which will result in faster and more efficient roll out of charging rather than forcing fleets into a specific type.

C. Location Requirements

To promote locational flexibility for the M/HD-FCI sector, PACT encourages Ecology to not include location requirements for capacity credits. PACT favors greater flexibility for stakeholders to identify site locations based on their market demand and applicability to business needs.

In addition, any geographical limitations may unduly disqualify potential site investments that are otherwise optimal for enabling M/HD electrification and emissions reductions when considering truck traffic, land availability, land cost, energy capacity, and other factors. Flexibility in site selection will facilitate faster, lower-cost infrastructure deployment, including that which will serve key freight hubs and connecting corridors. Further, location requirements may create unintended consequences such as unintentionally triggering additional utility upgrades because developers will be incentivized to prioritize locations that may lack existing grid capacity when making siting decisions. These upgrades would add costs and delays to the EV transition, including higher costs for ratepayers at a time when high electricity rates are already a cause for concern.

Moreover, the policy climate is rapidly evolving around M/HD charging, which suggests the need for flexibility at this critical and early stage. For example, the recently released National Zero-Emission Freight Corridor Strategy "guides infrastructure deployment to meet growing market demands; catalyze public and private investment; and support utility and regulatory planning and action at local, state, and regional levels."[7] This strategy will have a substantial impact on freight electrification, particularly around project siting and resource allocation. The strategy focuses initially on key freight hubs serving first-mover fleets with return-to-base operations and the hubs are defined broadly, with a 100-mile radius and no mention of any specific geographic requirements. PACT sees value in aligning Washington's policy with this strategy, which will offer greater flexibility to build out charging ecosystems that are reflective of market demand.

Geographic restrictions would have other unintended consequences for fleet electrification. Cost considerations are a driver for where, how, and when to electrify certain segments of fleets. In addition to cost, fleets must navigate a slew of other issues such as power availability, zoning, permitting, and site size and design. Establishing location requirements would artificially push fleet depots where the incentives are available which would lower the available real estate for charging depots, further concentrate electric utility load, and drive-up costs for depot properties. Finally, customers should be enabled to find locations that would not potentially require multi-year grid upgrades. Location requirements would constrain customers from selecting sites where there may actually be more capacity available for faster, less costly build-out. Siting infrastructure where there is existing grid capacity is critical for fleets looking to rapidly electrify their operations.

PACT recognizes that a critical component of the transition to M/HD ZEVs is the environmental justice and diesel reduction benefits. There is an existing overlap between disadvantaged communities and where M/HD electrification will largely take place. For example, disadvantaged communities often overlap with industrial centers and ports. These communities inherently experience an outsized impact from truck and bus operation. Electrifying the M/HD sector will naturally support mitigating the adverse environmental impacts of M/HD trucking in these communities. This applies to both charging sites as well as the vehicles themselves. Additionally, PACT is receptive to concerns that siting charging infrastructure in certain disadvantaged communities may drive more truck traffic to these areas. PACT encourages the Commission to engage directly with disadvantaged and environmental justice communities in development of the rulemaking and in advance of implementing any location requirement to better understand their needs and perspective on this and related matters.

[7] National Zero-Emission Freight Corridor Strategy (driveelectric.gov) at page iii.

6. Conclusion

PACT is pleased to provide these comments in response to the State of Washington's Clean Fuel Standard Rulemaking (Chapter 173-424 WAC). PACT applauds Ecology's progress, including the proposal for a M/HD-FCI provision in the updated program, and provides the following recommendations:

- *Include private charging in capacity crediting.* Expanding credits to private charging will help reduce the steep initial costs associated with the buildout of infrastructure and support diverse operational needs across M/HD sectors.
- *Encourage market flexibility by not requiring a minimum nameplate capacity.* FSE providers and fleets should have flexibility to plan for power levels that accelerate the deployment of M/HD EVs at scale and across diverse market segments, and a minimum nameplate requirement would hamper essential market flexibility.
- *Maximize infrastructure deployment by not capping the number of FSE per site.* An artificial cap on the number of FSE per site would unduly impede M/HD charging deployment and run contrary to current market realities, which call for mass deployment of infrastructure to meet M/HD fleet demands.
- *Support market diversification and innovative charging solutions by not placing requirements on the types of chargers eligible for crediting.* Currently, there is no industry-wide standard for M/HD charging, and charger types and configurations should be dictated by market needs.
- *Maximize widespread programmatic benefits by not implementing locational requirements.* Stakeholders should be afforded the flexibility to identify site locations based on market demand and their applicability to business needs.

PACT stands in strong support for the proposed MHD-FCI program and looks forward to future engagement with Ecology on this matter.

Sincerely,
PACT

/s/
David Bonelli
Partner
Venable LLP
On behalf of PACT