

October 3, 2024

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

RE: 3Degrees comments in Response to Rulemaking to update Chapter 173-424 WAC, Washington Clean Fuels 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 August 30, 2024 and the public information sessions held on September 9 and 12, 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 agree 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 2019 COD that was discussed during the workshop 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 (e.g., Pacific Northwest, however defined) 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. It is also more straightforward to source from facilities within a well-established network such as WECC rather than a territory defined by potentially nebulous borders.

During the September 12 session, Staff stated that they sought feedback on whether a type of phase-in or grace period for new book-and-claim requirements was warranted. 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. As such, we suggest that any additionality and/or regionality provisions do not come into effect until Q4 2025 or early 2026 (assuming the regulatory process remains on schedule), giving about a full compliance year post-rule finalization for adaptation.

The proposal to align with the California Air Resources Board (CARB) to impose a 4x deficit generation penalty for exceeding a predetermined CI score will disproportionately penalize the biogas sector and should be adjusted down.

In their draft regulation to update the low-carbon fuel standard in California, CARB has proposed language to the effect that exceeding the CI score of a fuel pathway will result in both deficits being generated and a claw-back of credits, and the number of deficits per volume of fuel will be 4x the difference between the verified CI and the reported CI. As also stated in our feedback to CARB, 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. Furthermore, while we appreciate the differentiation in credit/deficit modification ratios between self-reported errors and those identified by Ecology, we recommend

the ratios for self-reported errors should each be reduced by 1, reducing the ratios from 4:1 to 3:1 and so on. Both adjustments would provide a fairer and cleaner means of ensuring that participants make best efforts to meet assigned CI scores.

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 carve out 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 8,500-14,000 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 also 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, the specific allowance that site visits to the entities using an aggregator can be done at the verifier’s discretion according to a

¹ WAC 173-424-420.

sampling plan resolves the possibility that a verifier would be required to visit thousands of disparate charging stations to verify electricity credits.

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/ Helen Kemp

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