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Nikki Harris, Senior Energy Policy Specialist
Washington Department of Ecology
Climate Pollution Reduction Program
P.O. Box 47600, Olympia, WA 98504

January 14, 2025

Subject: Comments on Proposed Linkage with California-Quebec Carbon Market

Dear Nikki Harris and Washington Department of Ecology,

Modern Electric Water Company (Modern), a customer-owned, not-for-profit electric utility serving Spokane Valley, appreciates the opportunity to provide input regarding Washington's proposal to link its carbon market with those of California and Québec, also known as "Linkage." While we understand the potential benefits of linkage, we have significant concerns that must be addressed to ensure the best outcomes for Washington's residents, environment and economy.

Benefits & Our Concerns

The California-Québec carbon market agreement has demonstrated potential benefits, such as creating a larger, more liquid market for carbon allowances, stabilizing prices and fostering regional collaboration on climate goals. These aspects could reduce volatility and improve market confidence.

However, there are several critical concerns. First, the California-Québec agreement has faced significant constitutional challenges, including issues under the Treaty Clause, Interstate Compact Clause, Foreign Affairs Doctrine and Foreign Commerce Clause. These challenges remain unresolved at the U.S. Supreme Court level, where they could very well arise under the incoming presidential administration.

The legal arguments from the Trump administration Department of Justice lawsuit in 2019 remain significant because they highlight potential constitutional vulnerabilities in California's agreement with Québec. If Washington links its carbon market to California and Québec, these unresolved constitutional issues could resurface, especially if a future federal administration revisits the challenge. This legal uncertainty poses a risk for Washington, which might become entangled in a similar lawsuit or be impacted if the linkage agreement is ultimately found unconstitutional by a federal court or the U.S. Supreme Court. Should linkage be invalidated, Washington could face a complex and costly disentanglement process, potentially leaving our businesses and consumers exposed to market instability.

Additionally, the California-Québec market is governed largely by California's terms. This raises concerns about Washington's ability to maintain sovereignty and ensure that our unique economic and environmental needs are prioritized. The pooling of markets with different economic growth rates, energy profiles and emissions baselines adds complexity and could lead to governance challenges and price volatility in Washington.

What's Missing in the California-Québec Agreement

A key issue in the California-Québec agreement is its limited integration of methods to account for the unique needs of each jurisdiction. For Washington, this is particularly important given our state's energy mix, reliance on hydropower and rural utility dynamics. Any agreement must include:

1. **Provisions for Market Sovereignty:** Washington should retain the ability to independently manage our carbon allowances, compliance periods and enforcement mechanisms. A loss of that autonomy could undermine our state's ability to respond to local market conditions and policy goals.
2. **Consideration for Renewable Energy Investments:** Washington's linkage agreement should incentivize local clean energy development without penalizing utilities for balancing energy requirements, as highlighted by Big Bend Electric Cooperative's concerns expressed in additional comments to Ecology submitted on December 19, 2024.
3. **Exit Mechanism:** There should be clear terms outlining how Washington could exit the agreement without disrupting businesses or consumers if linkage proves contrary to our state's interests.

Considerations for Linkage Criteria

In analyzing linkage criteria, we urge the Department of Ecology to evaluate the following:

- **Constitutional and Legal Risks:** The unresolved constitutional challenges to the California-Québec agreement represent a possible liability. Washington should assess the potential legal risks and create contingency plans for worst-case scenarios.
- **Economic Impacts:** Conduct a detailed analysis of how linkage would affect allowance prices, compliance costs for utilities (especially small, not-for-profit electric cooperatives) and economic growth across different sectors, particularly in rural areas.
- **Market Oversight and Governance:** Washington must ensure equitable representation in governance structures to prevent California from disproportionately influencing market operations and policy decisions.
- **Energy Portfolio Impacts:** Ensure the criteria account for Washington's unique energy mix, especially our considerable reliance on hydropower and investments in local renewable projects. Policies should not inadvertently penalize our utilities using balancing energy or disadvantage local clean energy projects.

Modern Electric Water Company believes that while linkage with the California-Québec carbon market has potential benefits, significant risks must be addressed before moving forward. The unresolved constitutional issues, potential loss of sovereignty and governance complexities pose threats to Washington's ability to maintain control over own carbon market. Additionally, the agreement must safeguard investments in renewable energy and ensure that small utilities like ours are not disproportionately burdened.

We urge the Department of Ecology to carefully evaluate these concerns and incorporate strong protections into any linkage agreement. Washington must prioritize the long-term interests of our residents, businesses and environment above external pressures to integrate markets prematurely.

Thank you for your consideration of these comments. We look forward to continued dialogue on this important issue.

Sincerely,

Chelsea Martin,
Government Relations Coordinator
Modern Electric Water Company
Spokane Valley, Washington

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