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Via Electronic Filing

Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: Cap-and-Invest Program Updates and Linkage Rulemaking Comments

Georgia-Pacific Corporation ("GP") appreciates the opportunity to file these comments on the Washington Department of Ecology's ("Ecology") April 24, 2025, Cap-and-Invest Program Linkage Rulemaking ("Linkage Rules"). GP's comments focus on covered entity status under the Climate Commitment Act ("CCA") with respect to electricity importers. Specifically, for the reasons provided below, GP recommends that Ecology clarify that an electricity importer is separately covered with respect to its emissions for imported electricity from specified and unspecified sources, and that covered entity status with respect to unspecified sources does not alone render the importer covered with respect to specified sources. In addition, GP recommends that Ecology make clear that the compliance obligation for imports of unspecified electricity with less than 25,000 metric tons ("MT") of associated carbon dioxide equivalent ("CO_2e") apply beginning on January 1, 2025, not at the beginning of the first compliance period.

Background

GP owns and operates several manufacturing facilities in the Pacific Northwest, including four pulp and paper mills which collectively provide over 2,100 jobs to the region. One of these mills is located in Camas, Washington ("Camas Mill") and another is located in Wauna, Oregon ("Wauna Mill"). Both the Camas Mill and the Wauna Mill are served by Clatskanie People's Utility District ("CPUD"), an Oregon utility. CPUD serves the greatest majority of the Camas Mill's electricity requirements with the output from the Wauna Mill's biomass cogeneration facility ("Wauna Cogen") – a specified resource whose annual CO_2e emissions are less than 25,000 metric tons ("MT") – and a portion of CPUD's slice product purchased from the Bonneville Power Administration ("BPA"). Any remaining load, if required, would be met with unspecified market purchases. To GP's knowledge, this supply arrangement – in which the Camas Mill is served by specified resources with emissions under 25,000 MT of CO_2e that may be supplemented with unspecified energy – is unique in Washington.

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Although the current version of the Linkage Rule is not explicit on this issue, it includes a note in the summary table stating that "[r]eporters who have any compliance obligation incur compliance obligations for all their greenhouse gas emissions reported under Chapter 173-441 WAC ...."[1] In a subsequent CCA Market Notice on unspecified electricity imports and opt-in registration, Ecology stated that "Reporters who have any compliance obligation incur compliance obligations for *all* their greenhouse gas emissions reported under Chapter 173-441 WAC ...."[2] Thus, as GP understands Ecology's interpretation of the CCA, if CPUD incurs a compliance obligation for the emissions associated with unspecified energy it uses to serve the Camas Mill, it will also have a compliance obligation for the emissions associated with the electricity it imports from the Wauna Cogen and any associated with its BPA Slice product, despite the fact that the emissions from these specified sources do not meet the 25,000 MT threshold.

Comments

The CCA, as amended by ESSB 6058 from the 2024 Legislative Session, establishes requirements for an "electricity importer" to be a "covered entity" under the law (an "electricity importer" is also a subset of "first jurisdictional deliverers").[3] Prior to ESSB 6058, electricity importers were only covered entities if they imported electricity whose associated emissions exceeded 25,000 MT of CO_2e. Following passage of ESSB 6058, an electricity importer's covered entity status was segregated between imports from specified and unspecified sources. Specifically, RCW 70A.65.080(1)(c), in relevant part, provides that a person is a covered entity:

> (i) Where the person is a first jurisdictional deliverer importing electricity into the state and:
>
> (A) For specified sources, the cumulative annual total of emissions associated with the imported electricity exceeds 25,000 metric tons of carbon dioxide equivalent; [or]
>
> (B) For unspecified sources, the cumulative annual total of emissions associated with the imported electricity exceeds 0 metric tons of carbon dioxide equivalent ...

Although not explicit in the Linkage Rules, Ecology appears to interpret this section to mean that if a person is a covered entity with respect to either specified or unspecified sources, then it is automatically a covered entity with respect to the other source type. GP disagrees with this interpretation for at least two reasons. First, Ecology's reading is

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1 Linkage Rules, Summary Table at 2-3.

2 Washington Department of Ecology Daily Digest Bulletin, CCA Market Notice: Unspecified electricity imports and opt-in registration (May 2, 2025) (emphasis in original).

3 RCW 70A.65.010(39).

inconsistent with accepted principles of statutory interpretation. Second, Ecology's reading is inconsistent with California's cap-and-trade rules establishing similar obligations on electricity importers. Given that the purpose of ESSB 6058, and the Linkage Rules, is to facilitate linkage with California, a consistent interpretation of electricity importer requirements is reasonable.

Further, as noted above, GP believes it is the only facility in Washington State with an electricity supply arrangement that may include a specified source with less than 25,000 MT of CO_2e and some amount of unspecified electricity. And even if it is not the only one, such a circumstance is surely rare. Interpreting ESSB 6058 to apply separate covered entity requirements with respect to the import of specified and unspecified electricity will not result in the exemption of significant quantities of GHG emissions from CCA compliance.

1. *A statutory reading of ESSB 6058 indicates that covered entity status applies separately to imports of specified and unspecified electricity.*

Ecology's interpretation of ESSB 6058 through the Linkage Rules is unsupported by the plain language of the statute. The Washington Supreme Court has held that, when interpreting statutes, the "fundamental purpose is to ascertain and carry out the intent of the legislature."[4] When a statute's meaning is clear on its face, "the court must give effect to that plain meaning as an expression of legislative intent."[5] If, after examining the plain language of legislative intent, the statute is still ambiguous, it is "appropriate to resort to aids of construction, including legislative history."[6]

In addition to failing to effectuate the stated Legislative intent of ESSB 6058 to promote linkage with the California-Quebec carbon market, as more fully discussed in the next section of these comments, the Department of Ecology's interpretation of RCW 70A.65.080(1)(c) is contrary to the plain language of this law. The CCA defines who qualifies as a covered entity for owners of emitting facilities or for first jurisdictional deliverers.[7] First jurisdictional deliverers have two qualifiers, one for instances where energy is generated in the state of Washington[8] and one for instances of energy imported from out of state.[9] Importers are considered covered entities with respect to three types of sources – unspecified sources, specified sources, and unspecified sources purchased from a federal power marketer under Section 5(b) of the Northwest Power Act.[10]

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4 *Quinault Indian Nation v. Imperium Terminal Servs., LLC*, 187 Wn.2d 460, 468 (WA 2017) citing *In re Marriage of Schneiger*, 173 WN.2d 353, 363 (WA 2011).
5 *Id.*
6 *Dep't Ecology v. Campbell & Gwinn, LLC.*, 146 Wn.2d 1, 12 (WA 2002).
7 RCW 70A.65.080(1).
8 RCW 70A.65.080(1)(b).
9 RCW 70A.65.080(1)(c).
10 RCW 70A.65.080(1)(c)(i).

The statute's actual language separates all three source types as ways for a person to be considered a covered entity as a first jurisdictional deliverer: "A person is a covered entity … [w]here the person is a first jurisdictional deliverer importing electricity into the state and: (A) *For specified sources*, the cumulative annual total of emissions associated with the imported electricity exceeds [25,000 MT of CO_2e]."[11] The statute does not state that a person is a covered entity "for specified sources" when that person is a first jurisdictional deliverer importing either specified electricity exceeding 25,000 MT of CO_2e or importing any amount of unspecified electricity; rather, the statute creates a clear distinction between different types of imports with respect to the threshold required to become a covered entity. One is a covered entity for any emissions stemming from energy imported from an unspecified source. One is a covered entity for the emissions imported from specified sources that exceed 25,000 MT of CO2e. Finally, one is a covered entity for the emissions from unspecified energy sources associated with purchased electricity from federal power marketing administration that exceed 25,000 MT of CO2e. This plain language reading establishes that each individual condition creates its own CCA compliance obligation, not one condition triggering compliance with all.

If the Legislature had intended the result Ecology proposes in the Linkage Rules, it would have been easy for it to communicate this intent in the statute. It could have simply stated that a person is a covered entity for all emissions associated with imported electricity, regardless of source, if the person meets any of the following criteria: (1) imports of specified electricity exceeding 25,000 MT of CO2e; (2) imports of unspecified electricity exceeding 0 MT of CO2e; or (3) imports of 5(b) power under the Northwest Power Act exceeding 25,000 MT of CO2e. The fact that the Legislature did not do this, and instead created clearly distinct compliance thresholds for different types of imported electricity indicates that it did not intend for an entity with a compliance obligation for one category of imported electricity to have a compliance obligation for other categories of imported electricity unless the emissions threshold for that category is met. ESSB 6058 does not create covered entity status by association.

As further evidence that Ecology is deviating from the plain language of ESSB 6058 and, therefore, the intent of the Legislature in the Linkage Rules, the rules improperly combine specified sources and unspecified energy purchased under 5(b) of the Northwest Power Act for purposes of meeting the 25,000 MT threshold applicable to each of these imports separately. The Linkage Rules state that a person is a covered entity if the person is a first jurisdictional deliverer "[w]hose cumulative annual total of covered emissions associated with the imported electricity for any calendar year from specified sources and qualifying unspecified electricity purchased from a federal power marketing administration equal or exceed 25,000 metric tons of carbon dioxide equivalent per year."[12] But again, the

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11 RCW 70A.65.080(1)(c)(i)(A) (emphasis added).
12 Proposed WAC 173-446-030(1)(c)(i).

25,000 metric ton threshold in ESSB 6058 clearly applies separately to specified sources and Section 5(b) imports from BPA, not to both collectively. The statute even requires Ecology, with respect to Section 5(b) imports, to first determine that "such electricity *is not from a specified source* ...."[13] Grouping emissions from specified sources and Section 5(b) imports is a clear violation of the plain statutory text and further demonstrates that the emissions thresholds for each type of electricity import are separate and distinct from each other.

2. *California's cap-and-trade rules indicate that it treats covered entities separately with respect to specified and unspecified imports*.

Even if the plain language of ESSB 6058 were not clear on its face with respect to covered entity status for electricity imports, Ecology's interpretation does not effectuate the legislative purpose of this bill. The legislative history of ESSB 6058 makes clear that a primary purpose of this amendment to the CCA was to allow the Washington carbon allowance market to efficiently link with other carbon allowance markets, namely the California-Quebec market.[14] Therefore, any interpretation of covered entity status for electricity imports under ESSB 6058 should be consistent with how California handles this issue.

California rules (1) define first deliverers of electricity similarly to the CCA, one for generating facilities and one for importers[15]; (2) have similar threshold levels as the Washington CCA[16]; and (3) separate imported electricity into the categories of specified and unspecified sources.[17] The language of the California rules is also clear in how compliance obligations for imported electricity are triggered – by each source individually. The definition of covered entity recognizes that each "emitted, produced, imported, manufactured, or delivered" emission has an applicable threshold specified in section 95812(a) of the rules.[18] Under this rule:

> (B) The *applicability threshold* for an electricity importer is based on the annual emissions from *each* of the electricity importer's sources of delivered electricity.
>
> 1. All emissions reported for imported electricity from specified sources of electricity that emit 25,000 metric tons or more of CO_2e per year *are considered above the threshold*.

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13 RCW 70A.65.080(1)(c)(i)(C) (emphasis added).
14 Final Bill Report, E2SSB 6058 at 2 (2024).
15 17 CCR § 95811(b).
16 *Id.* § 95812(c).
17 *Id.* § 95812(c)(B).
18 *Id.* § 95802.

2. All emissions reported for imported electricity from unspecified sources are considered to be above the threshold.[19]

For specified sources, the "applicability threshold" for covered entities is 25,000 MT per year, not 0 metric tons from unspecified sources.[20] This is not consistent with Ecology's Linkage Rule. As explained above, Ecology's interpretation groups different import sources together in a way that triggers compliance obligations for all sources if only one import source meets a threshold. By contrast, if California law were applied, unspecified and specified energy would each have its own threshold that triggers compliance. In order to better effectuate linkage between the Washington market and the California-Quebec market – as ESSB 6058 intended – Ecology should implement the covered entity requirements associated with electricity imports consistently with California.

3. Coverage of unspecified imports below 25,000 MT of CO2e must begin as of January 1, 2025.

The Linkage Rules specify that an electricity importer is covered with respect to unspecified emissions if those emissions exceed 0 MT of CO_2e annually "[b]eginning with the first compliance period … and for all subsequent compliance periods …."[21] While this is consistent with the language of ESSB 6058,[22] a constitutionally valid application of this language requires that electricity importers of unspecified electricity be covered for the associated emissions as of January 1, 2025, the effective date of ESSB 6058, not as of the beginning of the first compliance period, unless they were importing electricity with associated emissions of 25,000 MT of CO_2e or more annually.

Washington courts have held that retroactive application of a statute is unconstitutional under the due process or contract clauses if, among other things, "the

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19 *Id*. § 95812(c)(2) (emphasis added).

20 GP notes that 17 CCR § 95812(d)(2) appears to establish a 0 MT threshold for imports of specified electricity beginning on January 1, 2015. The interaction between subsection (c) (establishing a 25,000 MT threshold for specified imports "as of January 1, 2013, and for all future years") and subsection (d) (establishing a 0 MT threshold for specified imports) is somewhat unclear, and GP has not identified a definitive resolution. It may be that subsection (d) establishes the coverage threshold for specified imports as of the second compliance period under California's cap-and-trade law. Alternatively, pursuant to 17 CCR § 95851(a)-(b), it may be that subsection (d)'s thresholds apply only to fuel suppliers, despite the explicit reference to electricity importers. Regardless, the coverage thresholds in subsection (d) support GP's argument that the thresholds are distinct for each type of electricity import. If they were not, then an entity that imported less than 25,000 MT of CO_2e of specified electricity and some amount of unspecified electricity prior to January 1, 2015 would have the same compliance obligation as it would for the same amount of imports on January 1, 2015 despite the different coverage thresholds for specified imports. Thus, even if California currently includes specified electricity imports at a coverage threshold of 0 MT of CO_2e, that is because the state's rules explicitly establish this coverage level. By contrast, ESSB 6058 makes clear that the coverage threshold for specified electricity imports is 25,000 MT of CO_2e.

21 Draft WAC 173-446-030(1)(c).

22 ESSB 6058 § 4(1)(c).

retroactive law defeats the reasonable expectations of the parties ...."[23] Here, the CCA has required compliance by covered entities since January 1, 2023, but until the effective date of ESSB 6058, electricity importers (of specified or unspecified sources) were only covered if emissions associated with their imports exceeded 25,000 MT of CO_2e. It is self-evident that an importer of unspecified electricity below this threshold would have had a reasonable expectation that it did not have a compliance obligation for these emissions in 2023 or 2024. The Linkage Rules, however, would establish just such a compliance obligation at a time when electricity importers can no longer modify their actions in response to this obligation. Whenever possible, courts interpret statutory language in a manner that avoids rendering that language unconstitutional.[24] Ecology should do the same here by clarifying that importers of unspecified electricity have a compliance obligation for the associated emissions below 25,000 MT beginning on January 1, 2025.

Conclusion

For the reasons discussed above, Ecology should clarify in the Linkage Rules that the coverage thresholds for electricity imports apply separately with respect to each type of listed import. Additionally, Ecology should clarify that any compliance requirement for unspecified electricity imports with associated emissions below 25,000 MT of CO_2e applies beginning on January 1, 2025. GP appreciates Ecology's attention to these issues and looks forward to working with Ecology as this rulemaking progresses.

Sincerely,

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[23] *In re Santore*, 28 Wn. App. 319, 324 (1981).
[24] *Cawsey v. Brickey*, 82 Wash. 653, 663-64 (1914); *State v. Madden*, 16 Wn.App.2d 327, 335-36 (2021).