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Re: Comments of the Alliance of Western Energy Consumers on Cap-and-Invest Program Updates and Linkage Rulemaking – CR-102 Proposed Rule Amendments to Chapter 173-441 WAC Reporting of Emissions of Greenhouse Gases and Chapter 173-446 WAC, Climate Commitment Act Program Rule

The Alliance of Western Energy Consumers ("AWEC") appreciates the opportunity to submit comments on the Washington Department of Ecology's ("Ecology") Notice of Proposed Rulemaking, CR-102, to amend the Climate Commitment Act ("CCA") Cap-and-Invest Program Rule (WAC Chapter 173-446) and the Reporting of Emissions of Greenhouse Gasses ("GHG") Rule (WAC Chapter 173-441).

AWEC is a trade organization representing the interests of its members, which include large energy consumers within Washington and the surrounding region. AWEC's members are responsible for providing tens of thousands of highly paid, technical, family-wage jobs across a broad range of industry sectors such as agriculture, aeronautics, air products, pulp and paper, food processing, information technology, healthcare, technology, and more. Thanks to Washington's abundant hydro resources, they also have some of the cleanest processes in terms of carbon emissions in the world. Because AWEC members consume millions of dollars in electricity each year, affordability and reliability have always been central to AWEC's mission—and affordability concerns have become increasingly acute for all Washington ratepayers. Additionally, many of AWEC's members also own facilities designated as emission-intensive and trade-exposed ("EITE") under the CCA. These facilities, despite the intention to protect them from excessive costs of compliance, still incur increased costs associated with the CCA. This includes certain electricity-related costs, despite the provision of free allowances for electric utilities' retail loads, and increased costs in the future as free allowances for EITEs' direct emissions decline over time. Thus, any rules that Ecology makes regarding the CCA directly affect many of AWEC's members.

Implementation of the CCA with affordability as a key consideration remains a priority for AWEC. The Cap-and-Invest Program has substantial cost implications for electricity and natural gas consumers, including EITEs. If electricity rates rise beyond sustainable levels – driven in part by the proposed amendments to rules resulting in increased risk of higher CCA compliance costs – Washington industry will face reduced competitiveness, lost jobs, reduced investment, and harm to local communities and the state economy. Industries capable of shifting production may relocate out-of-state; others may be forced to curtail or permanently close operations. Ecology must therefore give substantial weight to affordability and customer impacts in final allocation-related rules.

Additionally, Ecology must implement the CCA in accordance with the plain language of the law and the Legislature's intent. AWEC remains concerned that the Legislature's intent to ensure that industry in Washington is not disproportionately impacted by CCA implementation, as well as clear statutory requirements, are not met by the Linkage Rules in at least one key respect – by failing to recognize that covered entity status based on importing unspecified sources alone does not render the electricity importer covered with respect to specified sources. Ecology's proposed rules exceed or misapply statutory authority and create avoidable cost exposure for end-use consumers.

<u>WAC 173-446-030(1)(c) – First-Jurisdictional Deliverer that Imports Electricity</u>

The CCA, by its plain language in RCW 70A.65.080(1)(c), applies separate emissions thresholds to specified electricity imports, unspecified electricity imports, and unspecified energy sources associated with purchases from Section 5(b) of the Northwest Power Act for purposes of determining compliance obligations for covered entities. The legislature's use of the disjunctive "or" to delineate each of the circumstances listed in RCW 70A.65.080(1)(c)(i) is clear and unambiguous – each circumstances provides an independent basis for determining a covered entity that Ecology lacks the authority to combine in rule.

Consistent with its prior comments, AWEC continues to object to the proposed rules' imposition of a compliance obligation for specified imports based on an entity's compliance obligation for unspecified imports. AWEC supports the legal analysis and policy considerations included in comments filed by Georgia-Pacific Corporation ("GP"). As demonstrated by GP's comments, the implications of Ecology's error are significant: based on the hypothetical example provided in GP's comments, a facility with associated emissions of 10,000 $MTCO_2e$ from specified sources and 10 $MTCO_2e$ of emissions from unspecified sources could face a compliance obligation that is more than 1000 times greater than it would be under the correct statutory interpretation based on the most recent auction clearing price of \$64.56. Without a basis in law or policy, the proposed rule frustrates affordability, increases leakage risk, conflicts with the CCA's linkage objectives, and results in impermissible discrimination against out-of-state generation. AWEC supports GP's requested relief that the proposed rules be revised to clarify that importers of specified electricity have a compliance obligation for imported specified electricity only if the emissions associated with such imports exceed 25,000 MT/CO_2e annually, independent of the amount of imported unspecified electricity.

Additionally, the same concern and logic applies to the proposed rule's improper combining of the specified imports emissions threshold with unspecified energy sources associated with purchases from Section 5(b) of the Northwest Power Act for purposes of meeting the 25,000 MT/CO_2e threshold. Again, these are separate thresholds under the plain language of the RCW 70A.65.080(1)(c) and should be treated as such under any final rule adopted by Ecology. Again, a final rule adopted by Ecology must preserve statutory distinctions.

WAC 173-446-230(5) – No-cost Allowances for Administrative Costs

AWEC appreciates Ecology's efforts to clarify and provide certainty for no-cost allowances allocated to cover administrative costs. However, the tiered approach proposed in WAC 173-446-230(5), which provides a maximum allocation of 7,000 no-cost allowances for administrative costs to the largest utilities, appears insufficient to cover actual utility administrative costs at least in some circumstances. Any shortfall is borne by end-use consumers, including AWEC's members, exacerbating affordability concerns with the Cap-and-Invest Program.

A better balance between administrative ease and cost recovery is necessary. For example, Puget Sound Energy ("PSE") submitted comments indicating that its current and anticipated administrative costs are approximately double the value of no-cost allowances available under the proposed rule, assuming a ceiling price of $80 per allowance. Avista Utilities submitted comments using the same assumptions and identified a shortfall of approximately $840,000.

Given the significant variance between standardized allocations and actual compliance costs, AWEC urges Ecology to re-evaluate this approach and work with stakeholders to identify alternatives that provide sufficient compensation. As an interim measure, Ecology should provide additional no-cost allowances for utilities that demonstrate significant deviations between administrative costs and the value of allowances provided for those costs.

WAC 173-446-230(6) – Forced Consignment for Electric No-Cost Allowances

Consistent with its prior comments, AWEC opposes forced consignment of no-cost allowances for electric utilities and recommends that these provisions be removed from the final rule. Forced consignment introduces compliance-cost risk without adequate justification. End-use consumers are already paying for utilities' compliance with the Clean Energy Transformation Act ("CETA"), which is driving significant rate increases for some utilities. CETA was enacted to decarbonize the electric sector, and no-cost allowances are allocated to utilities to mitigate Cap-and-Invest compliance costs. Additional Cap-and-Invest price signals are therefore unnecessary to drive electric-sector decarbonization, and retaining no-cost allowances for compliance is consistent with legislative intent. Further, end-use electric consumers should not bear the cost burden of supporting market liquidity. Given Washington's linkage with California and Québec, the need for additional market liquidity may, in fact, be unsubstantiated. As such, requiring utilities to consign no-cost allowances may increase compliance costs and expose end-use consumers to avoidable costs without meaningful offsetting benefits or a strong policy basis. Electric utilities are responsible for managing Cap-and-Invest compliance obligations on behalf of customers and should retain the flexibility to do so in the most cost-effective manner, which requires electric utilities to determine whether consignment of any amount of no-cost allowances is necessary.

If Ecology determines that forced consignment at some level is appropriate, electric utilities should at minimum be expressly permitted to retain no-cost allowances sufficient to cover their compliance obligations. Forcing utilities to consign allowances needed for compliance increases the risk that compliance costs will exceed what is necessary due to forced auction participation. Although WAC 173-446-230(6) appears intended to preserve sufficient allowances for compliance, the formulae raise concerns because they are complex and rely on information that may not be reasonably knowable or predictable through 2045. This uncertainty could increase costs for end-use consumers. It is particularly concerning that the proposed rule includes language not previously presented in draft and not yet meaningfully reviewed by interested parties. If forced consignment provisions are retained, AWEC recommends that Ecology state expressly in rule that, notwithstanding those provisions, a utility is not required to consign any no-cost allowances reasonably determined necessary for compliance. The formulae used to determine allowances subject to forced consignment should be clear, simplified, and predictable so rate-setting bodies can ensure that compliance costs are minimized.

WAC 173-441-124 – Bonneville Power Administration Backstop Importer

AWEC understands Ecology's proposed amendments to the backstop compliance entity rules to overstate Washington Cap-and-Invest Program emissions and increase cost exposure for utilities that purchase electricity at Mid-Columbia ("Mid-C"). Those costs would be recovered from end-use consumers and would unnecessarily exacerbate affordability concerns.

Specifically, AWEC is concerned that non-bilateral transactions, including short-term balancing purchases and transactions with a broker via the Intercontinental Exchange ("ICE"), may be assigned the unspecified resource rate, rather than BPA's Asset Controlling Supplier ("ACS") emissions rate. As a result, even purchases of BPA power may not use BPA's ACS rate to determine compliance obligations. Given the significant difference between the unspecified emissions rate and BPA's ACS rate, the potential compliance obligation could be ten to twenty times greater, even though the emissions associated with the imported electricity have not changed.

AWEC understands that Ecology may be attempting to address a specific concern or perceived loophole. However, any remedy must be consistent with the CCA and narrowly tailored so the vast majority of short-term trading at Mid-C is not assigned an emissions rate that far exceeds actual emissions. To avoid unnecessary utility cost exposure that will be borne by end-use consumers, AWEC encourages Ecology to continue working with stakeholders, including utilities, BPA, marketers, and other interested parties, to identify appropriately tailored solutions.

Conclusion

In sum, AWEC urges Ecology to revise the proposed rules to better align with the plain language of the CCA, as amended by the Washington Legislature, to: (1) ensure that electric utilities retain sufficient no-cost allowances to meet their compliance obligations (as opposed to forced consignment), (2) ensure that no-cost allowances allocated for administrative costs are sufficient to cover a significant majority, if not all, administrative costs incurred by an electric utility, (3) ensure that ICE transactions attributed to purchased power from the Bonneville Power Administration are attributed BPA's ACS, rather than an unspecified emissions factor, and (4) ensure that covered entity status is determined separately for specified and unspecified electricity imports, consistent with the plain language of the CCA.

AWEC supports Ecology's efforts to link Washington's CCA program with the California and Québec Cap-and-Trade programs. Participation in a broader, more liquid carbon market has the potential to provide meaningful benefits for covered entities while supporting the state's emissions reduction goals. However, linkage should enhance Washington's program – not diminish the compliance mechanisms and policy choices that the Legislature deliberately adopted to address the unique characteristics of Washington's electricity sector. As Ecology finalizes these rules, we encourage the Department to preserve those Washington-specific compliance pathways and ensure that linkage is implemented in a manner that is consistent with the plain language and intent of the CCA, provides regulatory certainty, supports continued economic growth, and allows covered entities to comply with the program in a practical, reliable, and cost-effective manner.

/s/ Bill Gaines
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