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Via Electronic Filing

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Re: Cap-and-Invest Program Updates and Linkage Rule Proposal Notice
Comments of Georgia-Pacific Consumer Operations LLC

I. INTRODUCTION

Pursuant to the Washington Department of Ecology's ("Ecology") Notice of Proposed Rulemaking, CR-102, to amend the Climate Commitment Act Program Rule (Chapter 173-446 WAC) ("Proposed Rule"), Georgia-Pacific Consumer Operations LLC ("GP") files these comments on the Proposed Rule.

Consistent with its comments during the drafting phase of the Proposed Rule,[1] GP continues to object to Ecology's erroneous implementation of electricity importer requirements under the Climate Commitment Act ("CCA") that impose a compliance obligation for specified imports if an entity has a compliance obligation for unspecified imports. As discussed in more detail below, Ecology's interpretation is inconsistent with the plain language of the CCA and fails to further the purpose of the law it purports to implement – namely, to facilitate linkage with other cap-and-invest jurisdictions such as California. It is, therefore, unlawful. Moreover, Ecology's interpretation arbitrarily and unjustifiably favors in-state generation over out-of-state generation.

Ecology should revise the Proposed Rule to clarify that importers of specified electricity have a compliance obligation for that specified electricity if, and only if, the emissions associated with such electricity exceed 25,000 metric tons of carbon dioxide equivalent ("$MTCO_2e$") annually, regardless of the amount of imported unspecified electricity.

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1 GP Comments on Cap-and-Invest Program Updates and Linkage Rulemaking (May 16, 2025); GP Comments on Cap-and-Invest Program Updates and Linkage Rulemaking (Sept. 5, 2025); GP Comments on Ecology Request for Feedback on Centralized Electricity Markets and Electricity Imports (Feb. 20, 2026)

II. BACKGROUND

GP owns and operates several manufacturing facilities in the Pacific Northwest, including two paper mills and two 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. Through contractual arrangements, CPUD serves the 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 emissions associated with electricity production are less than 25,000 $MTCO_2e$ – and a portion of CPUD's slice product purchased from the Bonneville Power Administration ("BPA"). Any remaining load, if required, is 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 $MTCO_2e$ that may be supplemented with unspecified energy – is unique in Washington.

The consequence of this supply arrangement coupled with Ecology's erroneous interpretation of the CCA is illustrated by a hypothetical example. The Camas Mill's electricity requirements could be served by specified sources with associated emissions of 10,000 $MTCO_2e$ and unspecified sources with associated emissions of 10 $MTCO_2e$. At the most recent auction clearing price of $64.56, these facts would trigger a $645.60 compliance cost associated with unspecified imports. Under Ecology's erroneous interpretation of the CCA, however, the incurrence of a $645.60 compliance obligation for unspecified electricity imports would alone trigger a compliance obligation associated with specified emissions approaching $650,000.While Ecology was drafting the Proposed Rule, GP commented in opposition to Ecology's interpretation of the CCA in a manner that imposes a compliance obligation for emissions from specified sources solely as a consequence of a compliance obligation existing for emissions from unspecified sources.[2] Nevertheless, Ecology has not changed its interpretation in the Proposed Rule. In fact, the Proposed Rule itself is ambiguous on this issue. Proposed amendments to WAC 173-446-030(1)(c) define a covered entity as a first jurisdictional deliverer that meets the following criteria:

> [I]mports electricity into Washington, and:
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> (i) Whose cumulative annual total of covered emissions from emissions year 2025 or any subsequent year associated with the imported electricity 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 …;
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> (ii) Whose cumulative annual total of covered emissions from emissions year 2025 or any subsequent year associated with imported electricity from

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[2] *Supra*, n. 1.

> unspecified sources exceeds zero metric tons of carbon dioxide equivalent per year;[3]

The rule language itself could be interpreted to apply each of the above compliance thresholds separately to each type of import, as GP has previously advocated. In the Preliminary Regulatory Analysis accompanying the Proposed Rule, however, Ecology makes clear its interpretation of this language:

> We considered not covering emissions from specified imports when unspecified imports are greater than zero MT CO_2e but total specified imports are less than 25,000 MT CO_2e. Electric power entities with small amounts of unspecified imports do not want a compliance obligation for less than 25,000 MT CO_2e of specified imports. Some electric power entities have stated that it is very difficult to avoid unspecified imports 100% of the time even while they are trying to get specified as much as possible. This alternative would not meet the goal of having consistent treatment of electricity in Washington and California Cap-and-Invest Programs to support linkage. Covering emissions from any specified imports when unspecified imports are greater than zero MT CO_2e [is] required by statute and consistent with the current structure for determining covered entities and linkage considerations. See RCW 70A.65.080(1)(c)(i)(B).[4]

Despite claiming that separate compliance thresholds for specified and unspecified electricity imports "would not meet the goal of having consistent treatment of electricity in Washington and California Cap-and-Invest Programs to support linkage," and that imposing a compliance obligation for all imported emissions with any amount of unspecified emissions is "required by statute," Ecology provides no additional legal analysis or support for these statements.

III. DETAILED COMMENTS

A. The CCA applies separate emissions thresholds to specified and unspecified imports.

In support of its position that a combined compliance obligation for specified and unspecified imports is "required by statute and consistent with the current structure for determining covered entities," Ecology cites to RCW 70A.65.080(1)(c)(i)(B). This statutory subsection establishes the requirement that, "[f]or unspecified sources, the cumulative annual total of emissions associated with imported electricity exceeds 0 metric tons of carbon dioxide equivalent." This language does not support Ecology's position.

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3 Proposed WAC 173-446-030(1)(c)(i)-(ii).

4 Preliminary Regulatory Analyses at 129 (June 2026), *available at:* Preliminary Regulatory Analyses for Chapter 173-446 WAC, Climate Commitment Act Program Rule and Chapter 173-441 WAC, Reporting of Emissions of Greenhouse Gases (Cap and Invest Program Updates and Linkage).

The Washington Supreme Court has held that, when interpreting statutes, the "fundamental purpose is to ascertain and carry out the intent of the legislature."[5] 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."[6] 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."[7]

The CCA defines who qualifies as a covered entity for owners of emitting facilities or for first jurisdictional deliverers.[8] First jurisdictional deliverers have two qualifiers, one for instances where energy is generated in the state of Washington[9] and one for instances of energy imported from out of state.[10] 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.[11]

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;
> >
> > (B) For unspecified sources, the cumulative annual total of emissions associated with the imported electricity exceeds 0 metric tons of carbon dioxide equivalent; or
> >
> > (C) For electricity purchased from a federal power marketing administration pursuant to section 5(b) of the Pacific Northwest electric power planning and conservation act of 1980, P.L. 96-501, if the department determines such electricity is not from a specified source, the cumulative annual total of emissions associated with the imported electricity exceeds 25,000 metric tons of carbon dioxide equivalent.

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5 *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).
6 *Id.*
7 *Dep't Ecology v. Campbell & Gwinn, LLC.*, 146 Wn.2d 1, 12 (WA 2002).
8 RCW 70A.65.080(1).
9 RCW 70A.65.080(1)(b).
10 RCW 70A.65.080(1)(c).
11 RCW 70A.65.080(1)(c)(i).

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 $MTCO_2e$ 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 $MTCO_2e$. Finally, one is a covered entity for the emissions from unspecified energy sources associated with purchases of Section 5(b) electricity from BPA that exceed 25,000 $MTCO_2e$. 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 Proposed Rule, 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 $MTCO_2e$; (2) imports of unspecified electricity exceeding 0 $MTCO_2e$; or (3) imports of 5(b) power under the Northwest Power Act exceeding 25,000 $MTCO_2e$. 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.

As further evidence that Ecology is deviating from the plain language of the CCA, the Proposed Rule improperly combines 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 Proposed Rule states 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 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 25,000 metric ton threshold in the CCA clearly applies separately to specified sources and Section 5(b) imports from BPA, not to both collectively. These provisions in the CCA are separated by the disjunctive "or", whereas the Proposed Rule combines them with the conjunctive "and". The CCA 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.

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

B. Ecology's interpretation of the CCA is inconsistent with California's cap-and-trade program and, therefore, does not effectuate linkage.

Even if the plain language of the CCA 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 ESSB 6058, which amended the CCA and which the Proposed Rule implements. The legislative history of ESSB 6058 makes clear that a primary purpose of this bill 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 the CCA 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.
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> 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*.
>
> 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 Proposed

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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.
19 *Id.* § 95812(c)(2) (emphasis added).
20 The International Carbon Action Partnership's Fact Sheet on the California cap-and-trade program interprets coverage for electricity imports under that program consistently with GP in these comments: "**INCLUSION THRESHOLDS**: Facilities emitting greater than or equal to 25,000 tCO_2e per year. All electricity imported from specified sources connected to specific generator with emissions greater than or equal to 25,000 tCO_2e per year is covered. Emissions associated with imported electricity from unspecified sources have a zero threshold …." International Carbon Action Partnership, USA – California Cap-and-Invest Program at 3, *available at*: https://icapcarbonaction.com/system/files/ets_pdfs/icap-etsmap-factsheet-45.pdf.

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. 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.

C. Ecology's interpretation of the CCA creates inequitable results by improperly favoring in-state generation over out-of-state generation.

Ecology's decision to impose a compliance obligation for emissions from specified imports solely on the basis that a party also imports any amount of unspecified power creates an arbitrary and unjustifiable discrepancy between in-state and out-of-state resources. The CCA covers emissions associated with imported electricity so that parties cannot avoid CCA compliance simply by contracting for electricity from out-of-state resources. The purpose is to treat all emissions associated with electricity generated or consumed in Washington similarly, regardless of whether that electricity originates from in-state or out-of-state resources. Ecology's interpretation, however, treats in-state and out-of-state resources differently by favoring in-state generation in a manner that will unreasonably interfere with interstate commerce.

There is no dispute that if the Camas Mill purchased electricity from a facility located in Washington with emissions below 25,000 MTCO2e, a CCA compliance obligation associated with these emissions would not exist.[21] The electrical output would still be sold to the Camas Mill, but because that output is no longer imported into the state, the only emissions associated with imported electricity that would trigger a compliance obligation would be the *de minimis* amount of emissions associated with the importation of unspecified electricity. Thus, in a scenario where the Camas Mill purchased electricity from a facility located in Washington, it is clear that there would be no CCA compliance obligation associated with these specified emissions. Yet simply because the Wauna Cogen is located in Oregon, Ecology's interpretation of the CCA *does* impose a compliance obligation for these same emissions. This further demonstrates that Ecology's interpretation, is arbitrary and contrary to the intent of the CCA, and would result in a framework that discriminates against out-of-state producers and excessively burdens interstate commerce.

IV. CONCLUSION

For the foregoing reasons, Ecology should revise its Proposed Rule (or its official interpretation of the Proposed Rule) to make clear that the compliance thresholds for imported electricity apply separately to each category of import identified in the CCA separately, rather than a compliance obligation for one triggering a compliance obligation for another.

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[21] RCW 70A.65.080(1)(a).

Respectfully submitted,

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