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Department of Environmental Quality
State of Oregon
700 NE Multnomah Street, Suite 600
Portland, Oregon 97232-4100

RE: Comments on Climate Protection Program Emissions-Intensive, Trade-Exposed Entities Rulemaking

Dear Department of Environmental Quality Staff,

Thank you for the opportunity to provide comments following the second Rulemaking Advisory Committee meeting regarding emissions-intensive, trade-exposed (EITE) entities and direct natural gas (DNG) sources. We appreciate the opportunity to participate in this process and to share our perspective on regulations that will materially affect Oregon employers, energy providers, and customers.

As stated in our previous comments, NWGA supports reducing greenhouse gas emissions while preserving reliability, affordability, and Oregon's economic strength. Our feedback is guided by three principles: utilities must maintain sufficient year-round resources to serve customers; a one-size-fits-all approach will not adequately reflect facility-specific circumstances; and the cost of this transition must remain affordable for consumers while allowing businesses to grow in Oregon.

Based on these principles, NWGA offers the following policy recommendations for this rulemaking.

Protect Non-EITE and Non-DNG Consumers from Cost Shifting
This rulemaking should ensure that compliance obligations are allocated fairly and do not shift costs from EITE facilities or DNG sources to local distribution companies, fuel suppliers, small businesses, or residential customers. If certain emissions reductions are technically or economically infeasible within the required timeframe, other customers should not bear those costs through higher energy prices. Protecting non-EITE and non-DNG customers from unintended cost impacts should be a central program design principle.

Prevent Emissions Leakage and Economic Leakage

The Climate Protection Program should achieve real emissions reductions, not simply move emissions or economic activity outside Oregon. If compliance obligations exceed what is technically or economically achievable, facilities may reduce production, delay investment, or relocate to jurisdictions with less stringent requirements. That outcome could reduce Oregon jobs, investment, and tax base while leaving global emissions unchanged or higher. Rules should preserve Oregon's industrial competitiveness while encouraging achievable reductions based on technical feasibility, market conditions, and competitive impacts.

Promote Regional Consistency with Washington's Climate Commitment Act

Where practical, Oregon should align key elements of its Climate Protection Program with Washington's Climate Commitment Act. Many regulated entities operate facilities, supply chains, and energy infrastructure across state lines, and major differences in compliance requirements can increase complexity, costs, and investment uncertainty. Regional consistency would improve predictability, reduce competitive disparities, and lessen incentives to relocate production or investment based on differences in climate policy. Oregon's program should still reflect state-specific requirements while harmonizing major elements such as compliance schedules, benchmarking approaches, and treatment of confidential business information.

We appreciate DEQ's transparency and its willingness to incorporate stakeholder feedback as it develops these regulations. However, NWGA members remain concerned that the current starting point for this rulemaking is a fixed overall emissions cap that could create systemic inequities if EITE and DNG emissions are not treated with sufficient precision. A fixed cap, without a clear analysis of what emissions can actually be reduced within a reasonable timeframe, may shift compliance burdens to other program participants, including fuel suppliers, local distribution companies, small businesses, industrial customers, and residential customers. In practice, if certain EITE emissions are technically or economically infeasible to abate, the reductions required to preserve the integrity of the cap may fall on sectors and customers with fewer options and less ability to absorb increased costs.

This concern is heightened by the diversity of the facilities expected to be subject to this program. DEQ has identified EITE sectors that include pulp and paper, iron and steel, semiconductor, chemical, concrete, and other manufacturing facilities, each with very different operations, product markets, emissions profiles, abatement opportunities, capital-planning cycles, permitting requirements, and competitive pressures. A uniform compliance structure risks treating fundamentally different facilities as though they have the same reduction pathways. A more durable rule should recognize these differences and provide a transparent, facility-sensitive framework that distinguishes between reducible emissions and non-abatable emissions tied to required pollution-control or safety equipment, process emissions with limited near-term alternatives, and emissions that may be reduced only after major capital investment, permitting, or supply-chain availability.

We recommend the following:
1. Separate EITE and DNG emissions from the total cap or otherwise establish a clear mechanism to prevent unavoidable EITE and DNG emissions from shifting compliance burdens across sectors. If certain emissions cannot be abated within the compliance period, other sectors should not be required to make up the difference under the overall cap.
2. Conduct a facility-specific analysis to determine which portions of EITE and DNG emissions are not currently abatable and which reductions are technically and economically feasible. This analysis should distinguish between process emissions and combustion emissions, account for federally mandated pollution-control equipment and other required operations and identify realistic timeframes for reductions based on capital planning, permitting, interconnection, equipment availability, workforce constraints, and supply-chain timelines.
3. Include an adjustment mechanism that allows benchmarks and reduction schedules to be revised when a facility experiences material changes in production, feedstock, technology availability, regulatory requirements, energy infrastructure, or market conditions. The mechanism should be clear, timely, and administratively workable for both DEQ and regulated entities.
4. Evaluate and disclose customer cost impacts before finalizing reduction schedules, including impacts to small businesses, industrial customers, public institutions and residential customers who may have limited near-term alternatives and bear the compliance costs through higher energy prices.

With this analysis, the RAC will be better positioned to provide targeted feedback on program design, benchmarks, reduction schedules, community climate investments, and program review. A shared understanding of what can realistically be achieved from a technical and economic standpoint would also reduce complexity and administrative burden while supporting program goals.

Absent that analysis, NWGA offers the following comments based on the discussion at the July RAC meeting and the RAC 2 Policy Memo.

Benchmarking: We support expanding the benchmark period from the most recent three years (2023–2025) to ten years (2015–2025). A longer period is more likely to reflect normal business cycles, outages, changes in product mix, market disruptions, and facility-specific operating conditions. It would also reduce the risk that an anomalous short period becomes the basis for long-term compliance obligations and could lessen DEQ's administrative burden by reducing adjustment requests.

Reduction Schedules: We support delaying reductions until the 2030–2031 compliance period. Because these rules will not be finalized until 2027, entities will need time for compliance planning, investment decisions, and necessary lead times. We also support the recommendations for a reduction schedule of 0.75% every two years, or 1.5% every four years. Aligning Oregon's trajectory more closely with Washington's Climate Commitment Act would reduce regional regulatory disparities, lessen competitive disadvantages for Oregon facilities, and reduce incentives for emissions and investment leakage.

Adjustments to Reduction Schedules: We support a clear process to adjust reduction schedules and benchmarks when necessary. Entities should be able to submit information showing that reductions are not technically or economically feasible, including evidence related to market demand, conflicting environmental or energy policies, equipment failures, natural disasters, major operational changes, or similar impacts.

Privacy of Production Data: We support an approach to data privacy that is consistent with Washington's Climate Commitment Act.

"Information contained in assessments submitted to the department by an emissions-intensive, trade-exposed facility under this subsection (9) are records containing financial, proprietary, and other market-sensitive information in accordance with RCW 70A.65.100(9)(c), and such assessments are fully exempt from public disclosure in their entirety. The department may make public summarized information contained in assessments submitted under this subsection (9) in an aggregated manner that does not allow for the identification of any facility-specific financial, proprietary, or market-sensitive information."

Program Review and Evaluation: We support program review and evaluation, but the proposed timeframe may not be responsive enough to address leakage risk, compliance risk, or unintended economic impacts. A facility may suspend operations, relocate production, or defer investment before a formal leakage determination occurs. The rules should create a clear pathway for EITE and DNG entities to notify DEQ when compliance obligations may affect production, investment, or continued operations in Oregon, and to provide the information needed to evaluate leakage risk, customer cost impacts, and potential lost economic opportunities. Program review should serve as an early intervention tool, not only a retrospective assessment after Oregon has lost an employer, production line, or investment opportunity.

DEQ should evaluate this rulemaking as an integrated compliance framework, not as isolated components. Regulated entities will assess whether the combined requirements for benchmarks, reduction schedules, adjustment processes, reporting, and compliance instruments allow lawful, reliable, and competitive long-term operations. Those decisions will inform capital planning, production, investment in Oregon facilities, and long-term viability. For that reason, the program should begin with realistic assumptions about what reductions are technically and economically achievable, a clear understanding of cumulative compliance obligations, and safeguards against leakage or discouraged investment.

A compliance framework that increases emissions reductions on paper while shifting manufacturing, investment, or energy-intensive production to jurisdictions with less stringent standards would not achieve the Climate Protection Program's environmental objectives. The rulemaking should prioritize actual net emissions reductions while minimizing economic and emissions leakage.

NWGA appreciates DEQ's continued engagement and encourages the Department to refine the framework to protect customers, prevent leakage, and reflect facility-specific feasibility. We look forward to continued dialogue and to helping develop a practical pathway for emissions reductions that supports reliability, affordability, and economic growth in Oregon.

Sincerely,

Kelly K. Fukai

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