



UE-240653

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STATE OF WASHINGTON
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October 18, 2024

Jeff Killip
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: RE: Petition for Declaratory Order, Docket UE-240653

Dear Mr. Killip:

The Washington Department of Commerce (“Commerce”) appreciates the opportunity to comment on the petition of Goldfinch Energy Storage LLC concerning the interpretation of the Clean Energy Transformation Act (CETA).

Commerce has an interest in this matter because of the role that it shares with the Commission in implementing CETA. RCW 19.405.100 authorizes both agencies to adopt rules implementing this law, and the statutes reflect an expectation that Commerce and the UTC coordinate their interpretation and application of CETA.

Commerce believes that the conditions are present for the Commission to enter a declaratory order interpreting the definition of biodiesel fuel. Neither Commerce nor the UTC has adopted a rule defining this beyond its statutory definition nor, to our knowledge, otherwise interpreting or applying the statutory definition of biodiesel fuel. The petition demonstrates that there is uncertainty necessitating resolution, that an actual controversy exists and adversely affects the petitioner. We are not aware of any adverse effect on others or the general public if the Commission were to enter a declaratory order.

The uncertainty arising from the definition of biodiesel fuel in CETA is that that it excludes fuel derived from crops growth on certain lands cleared of forests without putting any time parameter on when that clearing of forests might have occurred.¹ By comparison, the Energy Independence Act includes a

¹ We note that there may be additional uncertainty as to what forests would qualify as “old growth” or “first growth,” as these terms are not defined in CETA. However, we believe the time parameter question can be resolved without resolving the meaning of those terms.

similar limitation on the eligibility of biodiesel fuel, but only where feedstock was grown on lands cleared after the effective date of that act.²

The CETA term includes the same limitation on crop lands but without any specific date. However, it would not be reasonable to interpret the CETA term exclude the use of biofuel feedstock grown on any land that ever in history was forested. Not only would it be impossible to apply such a never-cleared standard, it also is hard to articulate a public policy that would disqualify feedstock grown on land that was cleared of forests decades or centuries before the Legislature enacted a law intended to allow and encourage the use of biofuels for electricity generation. Such an interpretation would have the same effect as declaring that no biodiesel fuel derived from crops is ever eligible under CETA. Had that been the Legislature's intended result, it would have simply omitted entirely crop-derived fuels from the statute.

The more reasonable interpretation of this limitation is that it is intended to discourage or prevent the *purposeful* conversion of *additional* forest lands from old growth or first growth status to crop lands. The Legislature likely intended to address a concern that production of biofuels in large quantities would result in a strong economic incentive to convert existing forest lands to cultivation of soybeans, canola, or other feedstock crops. The Legislature likely recognized that crop-derived fuels are a form of renewable energy yet did not wish to create an incentive for excessive conversion of land from forest to field.

Commerce recommends that the Commission adopt this forward-looking approach to the crop lands provision in CETA and that it use the CETA enactment date for this purpose:

Biodiesel fuel is not a renewable resource for the purpose of CETA if it is derived from crops raise on land cleared from old growth or first growth forests where the clearing occurred after May 7, 2019.

This interpretation protects the interest in protecting forest lands from conversion to crop production for biodiesel feedstocks without eliminating completely this fuel source from the CETA eligibility set.

Thank you for considering these comments.

Sincerely,



Glenn Blackmon, Ph.D.
Director, Energy Policy Office

² "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.
RCW 19.285.030(21)