

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

GOLDFINCH ENERGY STORAGE
LLC

For an Order Declaring that the Goldfinch Energy Storage LLC’s purchases of biodiesel from the Chevron – Renewable Energy Group’s Grays Harbor Facility, or similarly situated biodiesel producing facilities, qualifies as a “renewable resource” under RCW 19.405.020(33)(h) for use in electric power generation qualifying under RCW 19.405.040(1)

DOCKET UE-240653

ORDER 01

DECLARATORY ORDER

BACKGROUND

- 1 On August 30, 2024, Goldfinch Energy Storage LLC (Goldfinch or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition for a declaratory order (Petition). The Petition asks that the Commission issue an order to approve that Goldfinch’s purchases of biodiesel from the Chevron – Renewable Energy Group’s Grays Harbor Facility (Grays Harbor Facility), or similarly situated biodiesel producing facilities, qualify as a “renewable resource” under RCW 19.405.020(33)(h) for use in electric power generation qualifying under RCW 19.405.040(1).
- 2 Goldfinch is currently developing three power plants in Washington for the purpose of making electricity from renewable biodiesel resources to follow the Clean Energy Transformation Act (CETA). Goldfinch notes that their ability to do these projects hinges on buyers being certain that the biodiesel that Goldfinch plans to use meets the definition under RCW 19.405.020(33)(h).¹
- 3 On September 19, 2024, the Commission extended the time for interested parties to respond to the Petition.

¹ Petition paragraph 3, page 2.

4 On October 18, 2024, the Washington Department of Commerce (Commerce) submitted comments in support of granting the Petition, stating that “[t]he petition demonstrates that there is uncertainty necessitating resolution, that an actual controversy exists and adversely affects the petitioner.” Commerce recommends the Commission declare that:

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.

5 Commission staff (Staff) filed a response to the Petition on October 18, 2024, supporting the Commission granting the Petition, as non-precedential, with the understanding that the Commission would retain jurisdiction to make future determinations related to the fuel sourced by the at issue facility.

6 This matter came before the Commission at a regularly scheduled Open Meeting on November 21, 2024. The Commission heard comments from Staff, Goldfinch, and Commerce. Staff reiterated its position as outlined in its response to the Petition. Staff clarified that while Staff did not include a date certain in its memo for the Open Meeting, it supports Commerce’s recommended date of May 7, 2019, but does not take a firm stance on the date, because most cropland used for growing source feedstock at this facility was deforested long before the 2010 or 2019 date.

7 Staff also clarified its reasoning for limiting its recommendation to the Grays Harbor Facility. Staff expressed concern regarding the lack of affirmative certification, regulatory process, or regulatory regime to oversee the process for producing and verifying CETA compliant biodiesel. Staff is also concerned about what Goldfinch’s reference to “similarly situated facilities” might mean. Staff stated that while work has been done to support the Petition in relation to the Grays Harbor Facility, similar support does not exist for similarly situated facilities, nor have those facilities been identified.

8 Staff also clarified that what is being recommended in this matter is an interpretation of statute, where the statutory language is unclear on what “old growth or first growth forests” means. Staff stated its belief that the clear intent of the statute is to prevent clearing old growth forests for fuel production. Staff agrees that an interpretation is needed to provide clarity on the statutory ambiguity.

9 Commerce reiterated its support for a date certain of May 7, 2019. Commerce expressed its desire to maintain consistency between Commerce and Commission interpretations.

Commerce expressed its belief that inquiries into whether fuels are CETA compliant does not need to be fact intensive. Instead, Commerce proposes adopting what is implied in the statute, and that the date certain being sought by Goldfinch is the date upon which the statute became law. Commerce also expressed its recommendation that the Order not limit the Commission's interpretation to the Grays Harbor Facility. Commerce argued that to do so, would create potential inconsistencies in application and disparity in treatment.

10 The Company commented that the date initially selected in its Petition was intentionally conservative. Goldfinch expressed its preference for the date proposed by Commerce, but also its willingness to accept either date. The Company specifically expressed its desire to have a date certain to move forward with its business plans to construct peaking facilities. The Company also expressed its intent to secure biodiesel from North American producers using only North American feedstock, to limit concerns over similarly situated facilities and its desire to not limit the Commission's decision in the manner proposed by Staff. It also expressed concerns over contracting, reliability, and meeting demand if the Commission's interpretation were limited to the Grays Harbor Facility.

DISCUSSION

11 Under WAC 480-07-930(1), any interested person may petition the Commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the Commission, as provided by RCW 34.05.240.

12 A petitioner must demonstrate in its petition that it satisfied the statutory prerequisites.² We find that Goldfinch has met the requirements under RCW 34.05.240(1).

13 Regarding the Petition, the Commission has reviewed Goldfinch's request for a date certain for qualifying biodiesel as a "Renewable Resource" under CETA, as well as responses and comments filed by Staff and Commerce. We agree that CETA is unclear which lands cleared from old growth are and are not eligible to grow CETA-compliant biodiesel crops. Providing a "date certain" would provide a way for entities developing biodiesel generating plants, and offtakers from such plants, to know which lands can and cannot be used to grow CETA-compliant biodiesel crops. Staff and Commerce agree with

² RCW 34.05.240(1) provides that a petitioner must demonstrate that: (a) uncertainty necessitating resolution exists; (b) there is actual controversy arising from the uncertainty; (c) the uncertainty adversely impacts the petitioner; (d) the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public; and (e) the petition complies with any additional requirements established by the agency.

the reasons provided by the Company supporting this request, but each party presents a different “date certain” or no date at all for consideration.

- 14 After reviewing the comments provided, and hearing the discussion during the November 21, 2024, Open Meeting, the Commission finds that Commerce’s proposed “date certain” of May 7, 2019, is the date from which the Commission and Goldfinch should evaluate whether fuels and feedstocks comply with CETA.
- 15 We agree with Commerce that the date on which CETA became law, May 7, 2019, is the implied date which applies under RCW 19.405.020(33)(h). Without provision of a date in statute, the Commission looks to the intent of the statutory language for clarity. We agree that the intent of the Legislature was to discourage, prevent, or otherwise disincentivize the conversion of remaining old growth or first growth forests to croplands for the purpose of producing biodiesel feedstock. Applying the date of May 7, 2019, allows clarity for suppliers, producers, manufacturers, and users. It also appropriately shifts the burden of proof to those contracting in the supply chain to determine if the feedstock and fuels are compliant. Accordingly, we adopt May 7, 2019, as a date certain under RCW 19.405.020(33)(h).
- 16 Staff has also reviewed Goldfinch’s request for a finding that its biodiesel purchases from the Grays Harbor Facility will likely be renewable biodiesel derived from land that has not been forested in recent years and will thereby likely qualify as a “renewable resource” for the purposes of CETA. Staff consulted with Commerce and agreed that the risk to old growth forests from Grays Harbor Facility’s supply chains are near-zero. We agree. However, the parties disagree as to whether such a finding should apply to similarly situated facilities.
- 17 There is an interest in enabling and having available clean and low-carbon fuels under CETA. Similarly, the Commission recognizes the need for additional capacity from CETA compliant resources, which Goldfinch appears to be trying to provide. We recognize Staff’s concerns regarding broadly declaring that fuels from similarly situated facilities, meeting the date certain, are CETA compliant, and that doing so may cause unforeseen harm. However, we also recognize that the Grays Harbor facility may have supply constraints, go out of business, make unreasonable contractual demands, or otherwise not be able to supply Goldfinch. Accordingly, we find it is in the public interest to enable multiple sources of supply for Goldfinch, and we decline to limit this decision to fuels only from the Grays Harbor Facility, but will require continued efforts by Goldfinch to show the fuels it sources are CETA compliant.

18 Having reviewed the Petition, and responses from Staff and Commerce, we grant the Company's Petition for declaratory order, adopting May 7, 2019, as a date certain under RCW 19.405.020(33)(h), finding that a fraction of the renewable diesel purchased from the Grays Harbor facility or similarly situated renewable biodiesel facilities qualifies under RCW 19.405.040(1), provided that Goldfinch shall provide to the Commission an annual report on or before December 31st of each year, identifying each facility Goldfinch purchased biodiesel from and providing a showing, as was done for Grays Harbor, that the facilities source feedstock is compliant with CETA.

FINDINGS AND CONCLUSIONS

- 19 (1) The Commission has jurisdiction over the subject matter of this order and is authorized under RCW 34.05.240 and WAC 480-07-930 to enter a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the Commission.
- 20 (2) Goldfinch petitioned the Commission for a declaratory order and has demonstrated in its petition that it satisfied the statutory prerequisites for the Commission to enter declaratory relief.
- 21 (3) This matter came before the Commission at its regularly scheduled meeting on November 21, 2024.
- 22 (4) The Commission finds that RCW 19.405.020(33)(h) is ambiguous and adopts May 7, 2019, as a date certain under RCW 19.405.040(33)(h).
- 23 (5) The Commission finds Goldfinch has shown that a fraction of the renewable diesel purchased from the Grays Harbor Facility qualifies under RCW 19.405.040(1).
- 24 (6) The Commission finds that further oversight in relation to Goldfinch's purchases from similarly situated facilities is needed, and therefore there will be a rebuttable presumption that a fraction of the renewable diesel purchased from the Grays Harbor facility or similarly situated facilities qualifies under RCW 19.405.040(1), if Goldfinch provides to the Commission an annual report on or before December 31st of each year, identifying each facility Goldfinch purchased biodiesel from and providing a showing, as was done for Grays Harbor, that the facilities source feedstock compliant with CETA.

ORDER

THE COMMISSION ORDERS:

- 25 (1) The Commission grants, Goldfinch Energy Storage LLC’s Petition for declaratory order, and adopt May 7, 2019, as a date certain under RCW 19.405.020(33)(h), and declare that a fraction of the renewable diesel purchased from the Chevron – Renewable Energy Group’s Grays Harbor Facility or similarly situated renewable biodiesel facilities qualifies under RCW 19.405.040(1), provided that Goldfinch shall provide to the Commission an annual report on or before December 31st of each year, identifying each facility Goldfinch purchased biodiesel from and providing a showing, as was done for Grays Harbor, that the facilities source feedstock compliant with Clean Energy Transformation Act.
- 26 (2) The Commission retains jurisdiction over this matter for purposes of effectuating this order.

DATED at Lacey, Washington, and effective November 21, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner