

**BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON THE APRIL 10, 2012, PROPOSED AMENDMENTS TO
THE LOW CARBON FUEL STANDARD REGULATION**

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority (“SCPPA”)¹ respectfully submits this comment on the proposed amendments to the Low Carbon Fuel Standard Regulation (“Proposed LCFS Regulation”) released by the California Air Resources Board (“ARB”) for 15-day public comment on April 10, 2012.

SCPPA supports the proposed changes to section 95481(a) that include definitions of battery electric vehicle, electric vehicle, hybrid electric vehicle, on-road, and plug-in hybrid electric vehicle. Defining these terms will reduce the potential for confusion in the application of the Proposed LCFS Regulation.

However, the Proposed LCFS Regulation does not incorporate several of the changes SCPPA suggested to the ARB in its comments of December 2, 2011. SCPPA wishes to reiterate its concern regarding these issues, to ensure they are considered in this rulemaking or subsequent rulemakings relating to the Proposed LCFS Regulation. In summary:

- Minor revisions should be made to sections 95484(a)(6)(B), (C), (D) and (E) of the Proposed LCFS Regulation to include a requirement to notify an electrical distribution utility, as second-priority credit recipient, that it has become eligible to opt in as the regulated party and to remove the requirement for the Executive Officer to approve such opting in.

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

- Section 95484(c)(2) of the Proposed LCFS Regulation should be revised to remove the requirement for regulated parties to demonstrate the physical pathway of electricity from the fuel producer to the provider of the fuel to the end user in California. Such a demonstration may be relevant for other fuels, but it is not possible or useful in the case of electricity.
- The restriction to on-road vehicles in section 95484(a)(6)(E) should be revisited as soon as issues relating to credits for off-road vehicles are resolved.

These changes will help to maximize the number of credits that are claimed and available for use by regulated parties and reduce the number of unclaimed credits. This is a priority of the ARB, as set out in the October, 2011 *Initial Statement of Reasons for Proposed Rulemaking* for the Proposed LCFS Regulation.²

II. SECTION 95484(a)(6) ON REGULATED PARTIES FOR ELECTRICITY SHOULD PROVIDE FOR ARB NOTICE, NOT APPROVAL, IF UTILITIES OPT IN.

Sections 95484(a)(6)(B), (C), (D), and (E) of the Proposed LCFS Regulation allow an electrical distribution utility to opt-in as the regulated party in certain circumstances if the Executive Officer approves. It is not clear on what grounds the Executive Officer will approve or disapprove of the utility becoming eligible to opt in.

SCPPA appreciates that the Executive Officer needs to know which party will be claiming the credits. However, an approval requirement should not be included unless there is a clear statement of the circumstances in which approval will be withheld.

Rather than an approval provision, a notice provision should be included under which the Executive Officer notifies the electrical distribution utility if the Electric Vehicle Service

² See for example pages 45 and 76 of the Initial Statement of Reasons.

Provider (“EVSP”) does not become the regulated party or ceases to perform the relevant obligations. As the regulator, the ARB will have the most complete and accurate methods for identifying whether an EVSP has not elected to become a regulated party, or fails to meet or has ceased to meet the criteria for receiving credits. To assist with this procedure, the application or registration form to be completed by the EVSP should include a space for the name and contact details of the relevant electrical distribution utility.

A. Proposed changes to section 95484(a)(6)(B) on public access charging.

In accordance with the discussion above, section 95484(a)(6)(B) of the Proposed LCFS Regulation should be revised as follows.

(6) *Regulated Parties for Electricity.* For electricity used as a transportation fuel, the party who is eligible to opt-in as a regulated party is determined as specified below: ...

(B) For transportation fuel supplied through public access EV charging equipment, the third-party non-utility Electric Vehicle Service Provider (EVSP) or Electrical Distribution Utility that has installed the equipment, or had an agent install the equipment, and who has a contract with the property owner or lessee where the equipment is located to maintain or otherwise service the charging equipment is eligible to opt-in as the regulated party.

If the EVSP is not the regulated party for a specific volume of fuel, or has not fully complied with the requirements of this subarticle, the Executive Officer will notify the Electrical Distribution Utility and the Electrical Distribution Utility is eligible to opt-in as the regulated party ~~with Executive Officer approval~~. To receive credit from transportation fuel supplied through public access EV charging equipment, the regulated party must: ...

B. Proposed changes to section 95484(a)(6)(C) on fleet charging.

Section 95484(a)(6)(C) of the Proposed LCFS Regulation sets out the responsible party in relation to credits for charging fleets of electric vehicles. This section should be amended to parallel the recommended amendments to section 95484(a)(6)(B), above. The Executive Officer

should notify the utility if the fleet operator does not elect to become a regulated party or fails to meet the criteria for receiving credits.

SCPPA's suggested changes to section 95484(a)(6)(C) of the Proposed LCFS Regulation are as follows:

(C) For transportation fuel supplied to a fleet of three or more EVs, a person operating a fleet (fleet operator) is eligible to be a regulated party. If the fleet operator is not the regulated party for a specific volume of fuel, or has not otherwise fully complied with the requirements of this subarticle, the Executive Officer will notify the Electrical Distribution Utility and the Electrical Distribution Utility is eligible to opt in as the regulated party ~~with Executive Officer approval~~. For transportation fuel supplied to a fleet of less than three EVs, the Electrical Distribution Utility is eligible to be the regulated party. To receive credit for transportation fuel supplied to an EV fleet, the regulated party must include in annual reporting an accounting of the number of EVs in the fleet.

C. Proposed changes to section 95484(a)(6)(D) on workplace charging.

For the reasons set forth above regarding section 95484(a)(6)(B), section 95484(a)(6)(D) of the Proposed LCFS Regulation on the responsible party in relation to credits for workplace charging should be amended. There should be a provision for the ARB to notify the utility if it becomes eligible to become the regulated party.

SCPPA's suggested changes to section 95484(a)(6)(D) of the Proposed LCFS Regulation are as follows:

(D) For transportation fuel supplied through private access EV charging equipment at a business or workplace, the business owner is eligible to be a regulated party. If the business owner is not the regulated party for a specific volume of fuel, or has not fully complied with the requirements of this subarticle, the Executive Officer will notify the Electrical Distribution Utility and the Electrical Distribution Utility is eligible to opt in as the regulated party ~~with Executive Officer approval~~. To receive credit for transportation fuel supplied through private access EV charging equipment at a business or workplace, the regulated party must: ...

D. Proposed changes to section 95484(a)(6)(E) on other electric vehicle charging.

For the reasons set forth above regarding section 95484(a)(6)(B), section 95484(a)(6)(E) of the Proposed LCFS Regulation on other electric vehicle charging should be amended. There should be no requirement for Executive Officer approval for utilities to opt in, in the absence of provisions on when approval will or will not be granted.

SCPPA’s suggested change to section 95484(a)(6)(E) of the Proposed LCFS Regulation is as follows:

(E) In the event that there is measured on-road electricity as a transportation fuel that is not covered in paragraphs (B) through (D) above, the Electrical Distribution Utility is eligible to opt-in as the regulated party ~~with Executive Officer approval~~. To receive credit for this transportation fuel, the Electrical Distribution Utility must meet all requirements set forth in section 95484(a)(6)(A).

III. THE RESTRICTION TO ON-ROAD VEHICLES IN SECTION 95484(a)(6)(E) SHOULD BE REVISITED.

Section 95484(a)(6)(E) of the Proposed LCFS Regulation is expressly limited to “on-road electricity” – presumably electricity supplied as a transportation fuel for on-road vehicles, as newly defined in section 95481(a)(45).

The Proposed LCFS Regulation uses the term “on-road” only in the definitions section and in section 95484(a)(6)(E). This term is not used elsewhere in the Proposed LCFS Regulation, although the term “off-road” is used in Table 5 in section 95485(a), listing energy economy ratios for various fuels and applications. The definitions of “transportation fuel”³ and “motor vehicle”⁴ are broad enough to cover off-road vehicles (such as forklifts, tractors, mining vehicles, and other industrial vehicles), and the list of exempted vehicles in section 95480.1(d) of the Proposed LCFS Regulation does not exempt off-road vehicles.

³ LCFS Regulation § 95481(a)(54).

⁴ Vehicle Code § 415, incorporated by reference in LCFS Regulation § 95481(a)(38).

It appears therefore that the Proposed LCFS Regulation was designed to allow for credits to be generated for alternative fuels supplied to off-road vehicles, with the sole exception of section 95484(a)(6)(E) which is specifically restricted to on-road vehicles. However, SCPPA understands that various practical issues with credit supply must be resolved before credits for fuelling off-road vehicles can in fact be generated. SCPPA supports further work on these issues in 2012. When issues relating to credits for off-road vehicles are resolved, the LCFS Regulation should be revised to remove the restriction to on-road vehicles in section 95484(a)(6)(E).

IV. DEMONSTRATION OF PHYSICAL PATHWAY UNDER SECTION 95484(c) IS NOT POSSIBLE OR USEFUL FOR ELECTRICITY.

Section 95484(c)(2) requires each regulated party to demonstrate the “physical pathway” of the relevant fuel from the fuel producer to the provider of the fuel in California, in order to be able to generate LCFS credits for that fuel:

A regulated party may not generate credits pursuant to section 95485 unless it has demonstrated or provided a demonstration to the Executive Officer that a physical pathway exists for each of the transportation fuels and blendstocks for which it is responsible under the LCFS regulation, and that each physical pathway has been approved by the Executive Officer pursuant to this section.

This provision is worded broadly and would include electricity as a fuel. Confirming this, electricity transmission lines are given as an example fuel delivery method:

“Physical pathway” means the applicable combination of actual fuel delivery methods, such as ... electricity transmission lines ... through which the regulated party reasonably expects the fuel to be transported under contract from the entity that generated or produced the fuel, to any intermediate entities, and ending at the fuel blender, producer, importer, or provider in California.

Requiring each regulated party for electricity (whether a utility, EVSP or other entity) to show a pathway of electrons from a particular generating station to the regulated party would be an exercise in futility. It is not possible to trace system electricity that is supplied to electric

vehicle charging stations back to any particular electricity generating station, given that electricity from all sources is indistinguishable once it is in the transmission or distribution system.

Furthermore, there appears to be no need for the LCFS Regulation to require demonstration of a physical pathway for electricity given that all electricity, regardless of its source, is an eligible fuel under the LCFS Regulation if it is used for transportation. Separate requirements apply to the demonstration that a particular amount of electricity has been used as transportation fuel (see section 95484(b)(3)(C)); this is the only information that should be required.

ARB staff stated in informal communications in late 2011 that the requirement to demonstrate a physical pathway has not been enforced in relation to electricity, that staff do not anticipate enforcing this requirement for electricity in the future, and that guidelines to the regulation (to be prepared by ARB staff) will clarify this point.

SCPPA appreciates that ARB staff understand the difficulties with complying with this requirement for electricity. However, the Proposed LCFS Regulation should be revised to remove the requirement for regulated parties to show a physical pathway for electricity, to avoid having a regulatory requirement that cannot be complied with, is not necessary, and is not being enforced.

SCPPA's suggested changes to section 95484(c)(2) of the Proposed LCFS Regulation are as follows:

(2) *Evidence of Physical Pathway.* A regulated party may not generate credits pursuant to section 95485 unless it has demonstrated or provided a demonstration to the Executive Officer that a physical pathway exists for each of the transportation fuels (other than electricity) and blendstocks for which it is responsible under the LCFS regulation, and that each physical

pathway has been approved by the Executive Officer pursuant to this section 95484(c)(2). ...

“Physical pathway” means the applicable combination of actual fuel delivery methods, such as truck routes, rail lines, gas/liquid pipelines, ~~electricity transmission lines~~, and any other fuel distribution methods, through which the regulated party reasonably expects the fuel to be transported under contract from the entity that generated or produced the fuel, to any intermediate entities, and ending at the fuel blender, producer, importer, or provider in California. ...

(A) *Initial Demonstration of Delivery Methods*. ... The documentation must include a map(s) that shows the truck/rail lines or routes, pipelines, ~~transmission lines~~, and other delivery methods (segments) that, together, comprise the physical pathway. ...

(B) *Initial Demonstration of Fuel Introduced Into the Physical Pathway*. For each blendstock or alternative fuel (~~other than electricity~~) for which LCFS credit is being claimed ...

V. CONCLUSION

SCPPA urges the ARB to consider these comments in finalizing the amendments to the LFCS Regulation. SCPPA appreciates the opportunity to submit these comments to the ARB.

Respectfully submitted,

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