San Francisco Water Power Sewer
Services of the San Francisco Public Utilities Commission

1155 Market Street, 4th Floor
San Francisco, CA 94103
T 415.554.3115
TTY 415.554.3488

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Chairman Mary Nichols and Members of the Board
California Air Resources Board
1001 I Street, Sacramento, California 95814
Electronically Submitted to the Clerk of the Board

Comments Regarding Staff Report on Proposed Rulemaking for the Low Carbon Fuel Standard being considered December 16th, 2011

Dear Chairman Nichols and Members of the Board,

The San Francisco Public Utilities Commission (SFPUC) respectfully submits the following comments in accordance with the California Air Resources Board's (ARB's) request for comment on the October 26, 2011 release of the "Staff Report: Initial Statement of Reasons for Proposed Rulemaking" and the included "Proposed Regulation Order." The ARB has noticed a December 16, 2011 meeting to consider the proposed amendments to the Low Carbon Fuel Standard (LCFS) regulation.

Through the SFPUC, the City and County of San Francisco (CCSF) provides almost 1 million MWh of electricity annually to San Francisco's municipal facilities and buildings and their tenants. Approximately 8% of this electricity fuels various forms of electrified transportation including electric vehicles, electrified mass transit (light rail, trolley buses, and cable cars), and shore-side power for boats and ships. As an energy provider and fuel supplier, the SFPUC's electricity supplies have amongst the lowest carbon intensity of any public electric utility or transportation fuel provider in California.

In addition, the SFPUC is preparing to launch our Community Choice Aggregation (CCA) program, CleanPowerSF, which plans to offer 100% renewable electricity supplies to all San Francisco residents and businesses. Thus, the SFPUC's offering of low-carbon electricity supplies will extend to commercial and residential electric transportation uses throughout San Francisco.

The SFPUC reiterates two specific recommendations made in our October 5, 2011 LCFS workshop comments to ensure that the LCFS program is non-discriminatory and allows **all** users of low-carbon electricity in place of petroleum-based fuels for transportation to benefit from the LCFS program on an equal basis.

1. The ARB should issue a resolution directing the Executive Director and staff to prioritize establishment of LCFS credits for all forms of electrified mass transit, with completion by December 2012.

2. The definition of "Regulated Parties" should be modified to include Community Choice Aggregators, together with all Load Serving Entities (LSEs), so that all parties that provide electricity supplies directly to transportation end uses can participate in the LCFS program.

Although not discussed in detail here, the SFPUC also reiterates the recommendation in our prior comments that the LCFS regulations should retain the provisions that allow for carbon intensities for electricity to reflect the supplier's specific resource mix and resulting carbon content.[1]

Discussion

1. **The ARB should issue a resolution directing the Executive Director and staff to prioritize establishment of LCFS credits for all forms of electrified mass transit, with completion by December 2012.**

During the September 14 workshop, ARB staff confirmed that all forms of transportation, except those explicitly excluded in §95480.1(d), are eligible to earn credits in the LCFS program. However, for certain types of eligible transportation, such as light rail and other electrified mass-transit systems, the factors necessary for compliance calculations, such as Energy Economy Ratios (EER), are not included in the LCFS regulations. Until these factors are included, most forms are of electrified mass transit are unable to participate in the LCFS program.

The SFPUC recognizes that technical details for the inclusion of light rail and other forms of electrified mass transit need to be worked out, but recommends that the regulations be modified as soon as possible. Broad eligibility for mass-transit options that use electricity as an alternative to petroleum-based fuels encourages both (i) increased fuel switching from high-carbon petroleum to low-carbon electricity, and (ii) increased use of mass transit in favor of less efficient modes in terms of vehicle miles and hours travelled.[2]

The SFPUC recommends that the ARB recognize mass transit as a distinct category within the transportation sector and prioritize establishment of the factors necessary to allow electrified mass transit to fully participate in the LCFS program.[3] To ensure that enabling regulations are developed without delay, CCSF recommends that the ARB issue a resolution directing the Executive Director and staff to prioritize establishment of LCFS credits for all forms of electrified mass transit, with completion by December 2012. The SFPUC stands ready to work with the ARB to develop the appropriate factors.

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[1] Specifically, Method 2A and Method 2B in §95486(c).

[2] This latter benefit supports one of the five strategies developed by the California Energy Commission (CEC) and ARB in accordance with AB 1007 (Pavley, Statutes of 2005) – *State Alternative Fuels Plan*: "Maximize the use of mass transit, encourage smart growth and land use planning to help reduce vehicle miles traveled and vehicle hours traveled."

[3] Mass transit is appropriately its own category within the transportation sector. Mass transit does not fit neatly within the "on-road" and "off-road" distinctions made by some parties. For example, San Francisco's electric and hybrid buses, street cars, cable cars and light rail all operate "on road" in San Francisco; our light rail system also operates on physically-separated light rail.

2. The definition of "Regulated Parties" should be modified to allow Community Choice Aggregators, together with all Load Serving Entities (LSEs) to earn LCFS credits.

The LCFS mandates a decrease in the carbon content of transportation fuels used in California. For this mandate to be achieved, the state must increase its reliance on low-carbon fuel supplies, including electricity supplies, in lieu of petroleum fuels for transportation. As a result, the ARB should ensure that all suppliers who provide low carbon electricity directly to transportation end uses should be eligible and have priority to earn LCFS credits as "regulated parties."

Current regulations allow electric utilities that provide distribution (delivery) of electricity supplies to their customers to participate in the LCFS program as "regulated parties" able to earn credits and, in specific circumstances, to have priority over other entities along the delivery chain. This is appropriate in instances where the distribution utility is also the electricity supplier, as the entire framework of the LCFS program is for participants to earn credits (or accrue deficits) based on the carbon content of the fuel that is supplied/consumed for transportation.

However, as drafted, amongst electricity suppliers, the regulations **limit** the definition of eligible "regulated parties" to "Electrical Distribution Utilities" (EDU), thus excluding those circumstances where customers choose to purchase their electricity supplies from a supplier who is not the customer's distribution utility – for example, when a customer chooses to purchase electricity supplies from a Community Choice Aggregator (CCA), or an electricity service provider. In these instances, eligibility and "regulated party" status defaults to the distribution utility, who has no role in, or cost responsibility for, the carbon content of the fuel that is being provided. Precluding suppliers and end-users that choose this path of delivery from participation in the LCFS is inequitable and should be corrected.

The ARB should provide and prioritize "regulated party" status for the entities responsible for the carbon content of the electricity supplies that are provided, that is, the retail electricity suppliers. For the purposes of the LCFS regulations (i.e. §95481), the definition of EDU should be expanded to include all Load Serving Entities (LSEs)[4] alongside all IOU "bundled service" providers, POUs and COOPs, and to establish opt-in priority for the retail electricity supplier. This modification is appropriate because: (i) LCFS credits are based on the carbon content of the supply portfolio, (ii) the electricity supplier has the information necessary to assign appropriate Carbon Intensities (CI), and (iii) the electricity supplier has direct control of the carbon content of and cost responsibility for the supplies that are provided.

[4] The term "Load Serving Entity" designates the entity responsible for providing electricity supplies to the end user, who in turn uses the electricity as a transportation fuel. The LSE is the "retail seller" of electricity supplies to the end-use customer. In general, Load Serving Entities are (i) the IOU, for its supplies that are delivered on a bundled basis to its retail customers, or (ii) CCAs and Electric Service Providers (ESPs), where a customer of an IOU has chosen to purchase retail supplies from an ESP or CCA while receiving distribution services from the IOU.

Allowing CCAs to earn LCFS credits on an equal basis alongside other LSEs, POUs and COOPs simplifies the process for returning benefits directly to the end-user. CCAs, for example, provide education and outreach to their retail customers on the carbon content and any other specific environmental attributes of their power supplies. CCAs can also provide direct rate relief to their customers that use electricity for transportation and can offer time-of-use electricity rates to encourage off-peak charging.

The ARB should not be concerned that inclusion of CCAs and other LSEs limits appropriate regulatory oversight. CCAs are subject to oversight by local governing boards and are subject to statutory and regulatory requirements regarding the makeup of their supply portfolio, including reporting requirements regarding their supply portfolio and allocations of LCFS credit benefits to their customers. These requirements are similar to those imposed on IOUs and POUs with respect to their supply portfolios.

Contrary to Southern California Edison's suggestion, returning to the draft language that allowed all LSEs to participate does not mean that the regulations would "slip back" to exclude local publicly-owned utilities (POUs) and electrical cooperatives (COOPs).[5] The ARB should simply modify the regulations to expand the definition of "Regulated Parties" to include all LSEs (CCAs, ESPs, and IOUs) as well as POUs and COOPs, and thereby ensure the equitable distribution of LCFS credits to all parties.

Finally, in addition to expanding the EDU definition, the SFPUC urges the ARB to develop a hierarchy of eligibility for LCFS credits that recognizes the importance of the role played by the electricity suppliers in reducing carbon emissions, and gives opt-in priority to those entities. This hierarchy could allow distributors who are not suppliers to opt-in should the electricity supplier choose not to participate or not be fully compliant.

Our specific recommended revisions to the regulations are attached to these comments as Appendix A.

[5] See SCE Comments on Third LCFS Regulatory Workshop, October 21, 2011, at 8.

Conclusion

As noted above, the SFPUC fully supports the goals and objectives of the Low Carbon Fuel Standard as a means to reduce the carbon content of the State's transportation fuels. Our request for a resolution to include the necessary factors for all forms of electrified mass transit by December 2012 will further encourage these modes of transportation as a means to achieving these emissions goals. Our request to include Community Choice Aggregators, as well as all Load Serving Entities, as eligible 'regulated parties' is intended make participation in LCFS more inclusive, equitable, and non-discriminatory, allowing all suppliers and consumers of electricity used for transportation to participate.

The SFPUC thanks the ARB for taking the time to consider our recommendations and is ready to work with the ARB as needed to implement these recommendations.

Please feel free to contact me at (415) 554-3115 or Jeremy Waen at (415) 554-3130.

/s/ Meg Meal
Meg Meal
Manager of Regulatory & Legislative Affairs
Power Enterprise
mmeal@sfwater.org

cc:
Jeremy Waen
Energy Analyst, Regulatory & Legislative Affairs
Power Enterprise
jwaen@sfwater.org

Barbara Hale
Assistant General Manager
Power Enterprise

Appendix A

Proposed Changes to the LCFS Regulation

Revise **Section 95481. Definitions and Acronyms.** as follows:

(a)

(22) "Electrical ~~Distribution~~ Utility" means an entity that ~~owns and operates an electrical distribution system, including~~ is:

(A) ~~a public utility as defined in the Public Utilities Code section 216 (referred to as an Investor Owned Utility or IOU)~~ a Load Serving Entity, as defined in Public Utilities Code section 380; or
(B) a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3; or
(C) an Electrical Cooperative (COOP) as defined in Public Utilities Code section 2776

which provides electricity to retail end users in California.

Revise **Section 95484. Requirements for Regulated Parties.** as follows:

- Replace "Electrical Distribution Utility" with "Electrical Utility" throughout to conform with the change to the definition above.

- Revise part (B) to allow those Load Serving Entities that do not provide distribution services to participate on a priority basis.