

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

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

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I. INTRODUCTION.

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 45-day public comment on October 26, 2011.

SCPPA strongly supports the proposed changes to section 95484(a)(6) of the LCFS Regulation. This section, entitled *Regulated Parties for Electricity*, allows electrical distribution utilities to opt in as regulated parties for the purpose of earning LCFS credits for electric vehicle (“EV”) charging in certain circumstances. SCPPA supports the allocation of credits in the manner set out in section 95484(a)(6) of the Proposed LCFS Regulation, and has no objections to the requirements that must be met in order to earn credits.

However, SCPPA proposes minor revisions 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 (“EO”) to approve such opting in. The restriction to on-road vehicles in section 95484(a)(6)(E) should also be revisited when issues relating to credits for off-road vehicles are resolved in 2012. These changes will help to maximize the number of credits that are claimed and available for use by regulated parties and

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.

reduce the number of unclaimed credits. This is a priority of the ARB, as set out in the *Initial Statement of Reasons for Proposed Rulemaking* for the Proposed LCFS Regulation (“ISOR”).²

II. PROVIDING FOR UTILITIES TO OPT IN AS REGULATED PARTIES HAS SEVERAL IMPORTANT BENEFITS.

The approach taken in section 95484(a)(6) of the Proposed LCFS Regulation, allowing electrical distribution utilities to opt in as regulated parties in various circumstances, is in accordance with the following principles identified by ARB staff at LCFS workshops held earlier this year and in the ISOR:

- Keep the proposed language simple to avoid confusion in regulated party designation and maintain relevancy as the EV charging market continues to evolve;
- Limit the number of regulated parties to increase the possibility that credits will be captured and made available to other regulated parties who need to purchase credits; and
- Include default regulated parties to maximize the number of credits captured and available for purchase and use for compliance.³

A. Allowing utilities to opt in helps to limit the number of regulated parties.

There are relatively few electrical distribution utilities, and utilities are relatively large and stable organizations. Unlike third party EV service providers (“EVSPs”) and companies providing fleet charging or workplace charging, the number of electrical distribution utilities is not likely to increase rapidly over the next decade.

Therefore allowing utilities to opt in as regulated parties will help to achieve the ARB’s goal of keeping the LCFS program as simple as possible by having a manageable number of

² See for example ISOR at 45 and 76.

³ ISOR at 45 and 76.

regulated parties, in order to increase the possibility that credits will be captured and made available to other regulated parties who need to purchase credits.

B. Allowing utilities to opt in helps maximize available credits.

It is appropriate to provide that electrical distribution utilities are eligible to receive LCFS credits to achieve the ARB's goal of maximizing available credits by preventing unclaimed credits. There will almost always be a utility involved in providing electricity as a transport fuel, and this situation is very unlikely to change over time. Therefore allowing utilities to opt in to receive credits will remain relevant even if the EV charging market evolves over time – one of the ARB's criteria in the ISOR.

On the other hand, there may not always be an EVSP with a long-term contract with the EV owner or property owner. As the technology becomes more common, EV customers and other entities wishing to make charging services available, such as providers of public/private facilities including malls, entertainment venues and convention centers, may be able to buy charging equipment from a big-box store and self-install or use an installer who is not in the business of operating charging stations long-term. In addition, a business owner or fleet manager with only a limited number of charging stations may not wish to opt in to the program, whereas a utility with several charging stations within its service territory may be more likely to opt in.

In these circumstances, providing for a utility to be eligible to claim the LCFS credits as a secondary or “default” regulated party reduces the risk that the credits remain unclaimed – another of the ARB's criteria in the ISOR.

C. Utilities will return the value of LCFS credits to EV customers.

Utilities are committed to returning the value of LCFS credits to EV customers, as required in the Proposed LCFS Regulation, and are well placed to do so. Utilities are subject to rigorous, cost-based, public and comprehensive oversight by their governing boards or the

California Public Utilities Commission (“CPUC”). As such, there are governing structures in place that will help ensure that utilities return the value of the LCFS credits they receive to their EV customers. In contrast, unregulated EVSPs are less well positioned to return value to EV customers, have less experience in doing so, and have fewer avenues to do so.

Utilities are in a good position to return the value of LCFS credits to customers in innovative and efficient ways. Utilities are stable, trusted energy providers with existing long-term relationships with ratepayers who are, or may become, owners of EVs. Utilities are experienced in reaching out to their customers to implement new technologies in fields such as energy efficiency and demand response, and utilities are experienced in collecting and reporting data on program implementation. Utilities can build on their experience to return value to EV customers in creative ways that will effectively support the State’s goals for increased electrification in the transport sector.

D. Allowing utilities to opt in is not inconsistent with the rulings of other regulators.

The CPUC’s Alternative-Fueled Vehicle proceeding, R.09-08-009, has no direct bearing on, and certainly does not mandate, which entity should be able to opt in as a regulated party under the Proposed LCFS Regulation. Even if the decisions made under this rulemaking were relevant, these decisions apply only to investor-owned utilities and do not affect publicly-owned utilities such as the members of SCPPA.

III. SECTION 95484(a)(6)(B) ON PUBLIC ACCESS CHARGING SHOULD PROVIDE FOR EO NOTICE, NOT APPROVAL.

Section 95484(a)(6)(B) of the Proposed LCFS Regulation allows an electrical distribution utility to opt-in as the regulated party in certain circumstances if the EO approves. It is not clear on what grounds the EO will approve or disapprove of the utility becoming eligible to opt in.

SCPPA appreciates that the EO 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 EO notifies the electrical distribution utility if the 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.

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 EO will notify the Electrical Distribution Utility and the Electrical Distribution Utility is eligible to opt-in as the regulated party~~with EO approval~~. To receive credit from transportation fuel supplied through public access EV charging equipment, the regulated party must: ...

IV. SECTION 95484(a)(6)(C) ON FLEET CHARGING SHOULD PROVIDE FOR EO NOTICE, NOT APPROVAL, AND SHOULD REFER TO A “PERSON”, NOT A “COMPANY”.

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

This section refers to a “company” that operates a fleet. This is restrictive, as it would not appear to allow entities other than companies to be considered fleet operators. Instead, any “person” should be able to be a fleet operator. This would be consistent with the usage of “person” in other provisions of the Proposed LCFS Regulation – for example, section 95480.2, *Persons Eligible for Opting Into the LCFS Program*.

“Person” is defined in the Health and Safety Code to include:

- any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company;⁴
- any state or local governmental agency or public district, or any officer or employee thereof;⁵ and
- the United States or its agencies, to the extent authorized by federal law.⁶

This definition is incorporated into the Proposed LCFS Regulation by reference.⁷

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

⁴ HSC § 19, incorporated by reference in HSC § 39047(a).

⁵ HSC § 39047(b).

⁶ HSC § 39047(c).

⁷ LCFS Reg § 95481(a) provides that “the definitions in Health and Safety Code sections 39010 through 39060 shall apply, except as otherwise specified...”

(C) For transportation fuel supplied to a fleet of three or more EVs, a ~~person~~company 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 EO will notify the Electrical Distribution Utility and the Electrical Distribution Utility is eligible to opt in as the regulated party with EO 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.

V. SECTION 95484(a)(6)(D) ON PRIVATE WORKPLACE CHARGING SHOULD PROVIDE FOR EO NOTICE, NOT APPROVAL.

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 EO will notify the Electrical Distribution Utility and the Electrical Distribution Utility is eligible to opt in as the regulated party with EO approval. To receive credit for transportation fuel supplied through private access EV charging equipment at a business or workplace, the regulated party must: ...

VI. SECTION 95484(a)(6)(E) ON OTHER EV CHARGING SHOULD NOT REQUIRE EO APPROVAL AND THE RESTRICTION TO ON-ROAD VEHICLES SHOULD BE REVISITED.

SCPPA supports the inclusion of new section 95484(a)(6)(E) of the Proposed LCFS Regulation on the allocation of LCFS credits for other measured electricity as transportation fuel.

However, as discussed above, there should be no requirement for EO approval for utilities to opt in, in the absence of provisions on when approval will or will not be granted.

This section is expressly limited to “on-road electricity” – presumably electricity supplied as a transportation fuel for on-road vehicles. Furthermore, the ISOR states, in relation to section 95484(a)(6) as a whole, that “The proposed changes discussed here are limited to on-road electric refueling.”⁸

The term “on-road” is not defined in the Proposed LCFS Regulation or in the Health and Safety Code definitions incorporated into the Proposed LCFS Regulation by reference.⁹ 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”¹⁰ and “motor vehicle”¹¹ 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.

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

⁸ ISOR at 43.

⁹ LCFS Reg § 95481(a).

¹⁰ LCFS Reg § 95481(a)(54).

¹¹ Vehicle Code § 415, incorporated by reference in LCFS Reg § 95481(a)(38).

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).

SCPPA’s suggested changes to section 95484(a)(6)(E) of the Proposed LCFS Regulation are 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 EO approval~~. To receive credit for this transportation fuel, the Electrical Distribution Utility must meet all requirements set forth in section 95484(a)(6)(A).

VII. DEMONSTRATION OF PHYSICAL PATHWAY UNDER SECTION 95484(c) IS NOT POSSIBLE OR NECESSARY 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 EV 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 that to date the requirement to demonstrate a physical pathway has not been enforced in relation to electricity, and that staff do not currently anticipate enforcing this requirement for electricity in the future. SCPPA appreciates that ARB staff understand the difficulties with complying with this requirement for electricity.

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 ...

VIII. CROSS-REFERENCE IN SECTION 95480.3(b) SHOULD BE CORRECTED.

Section 95480.3(b) of the Proposed LCFS Regulation states that:

As part of its registration, the regulated party of a fuel listed in subsection 95480.1(b)(1)(A)-(F) must elect for each of its opt-in fuels a carbon intensity (CI) value using one of the following methods: ...

However, section 95480.1(b)(1) has no subsections (A) through (F) – it has no subsections at all. The correct reference may be to section 95480.1(b), subsections (1) through (6), containing a list of “opt-in” fuels. This cross-reference should be corrected.

IX. 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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