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VIA ELECTRONIC AND US MAIL - LCFSWorkshop@arb.ca.gov

August 11, 2016

Mary Nichols, Chairperson
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments on 2016 Proposed Amendments to LCFS Regulations on Behalf of San Francisco Bay Area Rapid Transit District

Dear Ms. Nichols:

The San Francisco Bay Area Rapid Transit District ("BART") submits the following comments on the 2016 proposed revisions to the Low Carbon Fuel Standard ("LCFS") regulations (Title 17, California Code of Regulations, Sections 95480 *et seq*).[1]

I. INTRODUCTION AND SUMMARY

BART appreciates the opportunity to participate in the public comment process related to the California Air Resources Board's ("CARB") proposed revisions and amendments to the LCFS regulations published May 27, 2016 ("Proposed Regulatory Amendments"). BART participated in the Public Workshop held July 29, 2016, and submits these written comments to formally supplement that participation.

BART is a public transportation system serving the San Francisco Bay Area with 100% electric rapid transit rail service. By providing over 430,000 passenger trips each weekday and nearly 129 million trips annually,[2] BART service is among the most significant factors affecting the carbon intensity of the transportation sector in the Bay Area. With a growth plan that includes rail car replacement that will improve the fleet efficiency by an estimated 7%[3] and authority under California state law to buy renewable electricity directly from the wholesale

[1] All citations to the LCFS regulations in Title 17 will be to "Section 954xx" unless otherwise indicated.

[2] FY2016 (detailed BART ridership data are available at http://www.bart.gov/about/reports/ridership).

[3] http://www.bart.gov/about/projects/cars/sustainability.

market, BART will continue to play an important role in reducing transportation sector Greenhouse Gas ("GHG") emissions, the precise focus of CARB's Climate Change programs.

BART participates in the LCFS program as an opt-in Regulated Party and generates LCFS credits as a Fixed Guideway System. In these comments BART requests that it be allowed to use the actual Carbon Intensity ("CI") of its electricity load for its trains, rather than the CI value for California grid electricity published in the regulations (set at 105.16 gCO_2e/MJ in Section 95488(c), Table 6).

Allowing BART to use its actual CI would be consistent with California law and CARB's goal to reduce GHG emissions. BART is a unique regulatory entity under California state law. Specifically, under the California Public Utilities Code BART has the right to purchase power directly from various sources and thus determine the level of carbon intensity of its electricity load. As BART plans to green its electricity sources, it wishes to apply the specific (and verified) CI value of its fuel sources, and not be subject to the default value contained in the LCFS regulations. Explicitly allowing BART to use its actual CI in place of the statutory default encourages an even cleaner, greener, and more efficient BART system.

II. BART HAS A UNIQUE STATUTORY POSITION

BART has a unique position in the California regulatory scheme. Under the Public Utilities Code ("PUC"), BART has the power to directly procure its own energy and, by selecting a specific source, to control the level of CI in its electricity load. Specifically, PUC section 701.8 states the following:

> (a) To ensure that electrical corporations do not operate their transmission and distribution monopolies in a manner that impedes the ability of the San Francisco Bay Area Rapid Transit District (BART District) to reduce its electricity cost through **the purchase and delivery of preference power**, electrical corporations shall meet the requirements of this section.
>
> (b) Any electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system shall, upon request by the BART District, and without discrimination or delay, use the same facilities to do any or all of the following:
>
> (1) Deliver preference power purchased from a federal power marketing agency or its successor.
>
> (2) Deliver electricity purchased from a local publicly owned electric utility.

> (3) Deliver electricity generated by an eligible renewable energy resource.
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> (f) The BART District may elect to obtain electricity from the following multiple sources at the same time:
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> (1) Electricity delivered pursuant to subdivision (b).
>
> (2) Electricity supplied by one or more direct transactions.
>
> (3) Electricity from any electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system.
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> (g) For purposes of this section, "eligible renewable energy resources" has the same meaning as defined in subdivision (e) of Section 399.12.

PUC § 701.8 (Amended by Stats. 2015, Ch. 146, Sec. 1. Effective January 1, 2016.) (emphasis added.)

BART currently uses PUC section 701.8 to choose its energy sources and currently purchases over 29% of its electricity from specified sources with zero GHG emissions.[4] Notably, a large majority of BART's energy supply contracts are expiring at the end of 2016. The expiration of these contracts presents BART with the opportunity to significantly increase its renewable and zero-GHG-emitting supply sources by exercising the provisions of PUC section 701.8, including the most recent additions (added in 2015 via Senate Bill (SB) 502) which explicitly allow BART to directly purchase electricity from "eligible renewable energy resources," as defined in the specific provisions of the California Energy Commission's Renewables Portfolio Standard ("RPS") Program.[5] See PUC §701.8(b)(3) and (g).

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[4] Prior to the enactment of section 701.8, BART's electricity was purchased by BART from Pacific Gas and Electric Company ("PG&E"). BART serves only its own load. With the enactment of PUC section 701.8 and subsequent amendments, BART is now authorized to purchase electricity from any combination of federal power marketing agencies, local publicly owned electric utilities, eligible renewable energy facilities, direct access providers (ESPs) or PG&E, and PG&E is required to provide transmission and distribution services to BART for purchases from all such sources under PUC section 701.8.

[5] See PUC §399.12, cross-referencing California Public Resources Code §25471. Eligible RPS sources include certain "biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric

III. CARB REGULATIONS SHOULD DEVELOP A "BART-SPECIFIC" LCFS PATHWAY AND ALLOW BART TO USE ITS ACTUAL CI VALUE

Under the current LCFS program, the pathway for BART's electricity load is Pathway Identifier ELC002 and is assigned a value of 105.16 grams of CO_2 equivalent per megajoule ("gCO_2e/MJ"). See Section 95488(c) and Table 6, "Tier 2 Lookup Table for Gasoline and Diesel and Fuels that Substitute for Gasoline and Diesel."[6] BART recommends that it be allowed to use the actual CI of its energy supply portfolio instead of the assigned figure for "California grid electricity."

BART is one of the largest consumers of electricity in Northern California, as well as a central component of the Bay Area's broader transportation system. As BART exercises its ability to procure electricity directly from state-authorized energy sources, including renewable and other specified low- and zero-CI sources, the specific composition of its power portfolio will have a significant impact on California's GHG emissions, and the carbon footprint of every resident who relies on BART. Accordingly, BART recommends that CARB's LCFS program be allowed to reflect this progress with accurate and verified CI accounting.

IV. A BART-SPECIFIC LCFS PATHWAY AND ACTUAL CI VALUE ALIGN WITH STATE POLICIES

Through its multiple programs and overarching goals, CARB attempts to reduce GHG emissions. See, *e.g.,* Global Warming Solutions Act of 2006; Health & Safety Code section 38500 *et seq.* A BART-specific LCFS pathway and corresponding actual CI value would be consistent with this Act and this goal. It would also be consistent with state transportation policy. BART's service is a public good that **provides 129 million trips annually** (a figure that grows by about 3% a year) for residents who might otherwise drive GHG emitting cars or take GHG emitting buses each trip. BART takes vehicles off of the road, reducing both traffic congestion and fuel consumption. This shift in transportation mode, as well as a shift toward a low-carbon, renewable energy portfolio and continuing improvements to BART's fleet capacity and efficiency, yields direct decreases to GHG emissions from the transportation sector which is widely recognized as contributing to 37% of California's GHG emissions.

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generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current" sources.

[6] The Proposed Regulatory Amendments change the Pathway Identifier to ELCG100, but keep the value at 105.16 gCO2e/MJ.

These transportation sector GHG emission reduction policies are embodied in the Zero Emission Vehicle (ZEV) Action Plan which prioritizes rail electrification, and the use of renewable energy to power rail systems.[7] Also, the provisions of SB 350 (Stats. 2015; ch. 547), prioritize Transportation Electrification ("TE") as a tool to achieve California's 2030 GHG emissions goals, redefine and diversify the definition of TE, and place TE as a third stand-alone category on equal footing with energy efficiency and renewables. See PUC §§ 237.5 and 701.1(a)(1).

Utilizing a specific pathway is consistent with one of the Workshop's themes, which included accurately verifying carbon intensity by credit generators (*i.e.*, "upstream") to avoid misalignment during the credit exchange process (*i.e.*, "downstream"). BART is seeking to work with CARB to assess the feasibility of a fuel pathway that accurately reflects BART's portfolio mix as it procures electricity from "eligible renewable energy resources" under PUC section 701.8(b)(3) and (g).[8]

V. A BART-SPECIFIC PATHWAY AND ACTUAL CI VALUE ALIGN WITH THE ADDITION OF THE VERIFICATION PROVISIONS

As a Reporting Party under the LCFS program, BART will be subject to the Verification provisions contained in proposed Sections 95498 *et seq.*, regardless of the particular fuel pathway applied. Section 95498 calls for parties to take various actions (including site visits and calculations) and have a qualified third party verify the calculations. BART is not submitting comments on the Verification provisions, but does note that the verification process will require BART to devote additional time and resources to its participation in the LCFS program. There will be added program oversight and transparency. The resulting calculations will be reviewed and either corrected or confirmed. BART requests to use the specific number calculated and then verified, in place of the statutory designated average number of 105.16 gCO_2e/MJ.

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[7] 2015 ZEV ACTION PLAN (Draft) An updated Roadmap toward 1.5 Million Zero-Emission Vehicles on California Roadways by 2025 Governor's Interagency Working Group on Zero-Emission Vehicles April 2015.

[8] BART supports CARB's consideration of the integration of a zero carbon intensity pathway (ELCR100) for electricity from 100% solar or wind generation. Proposed Regulatory Amendments, at §95488(c) Table 6. If adopted, BART would like to use this pathway to the extent feasible. However, as presently contemplated by CARB, BART could not effectively use ELCR100 since it appears to apply exclusively to distributed generation (DG) resources. There are significant limits to the amount of DG that BART can place behind the meter, primarily due to real estate/space limitations as well as the load mismatch between solar generation and the period of BART's highest energy demand *(i.e.*, 9am and 5pm, during commute hours). In addition, the regulations for LCFS should match the other statutes and regulations that are already in place in California which strive to increase the use of renewable energy and decrease GHG emissions. ELCR100 should effectively match existing PUC section 399.12 and include all eligible renewable energy resources, not just DG solar and wind. BART seeks to work with CARB to identify optimal ways that BART can leverage this pathway.

Allowing BART to use a BART-specific pathway and an actual CI value is consistent with the Verification provisions. The data BART will provide to the verifier and to CARB will support its CI value and allow CARB to demonstrate the efficacy of its LCFS program.

VI. CONCLUSION

BART appreciates the opportunity to provide these written comments to supplement its participation in the July 29, 2016 Workshop. As a rapid transit district, BART is committed to reducing GHG emissions from the transportation sector. As an LCFS stakeholder, BART is committed to supporting success of the LCFS policy and program.

BART submits these comments to request that it be allowed to use actual, verified data to derive a concrete CI value instead of using the regulations' value for California grid electricity. The legislature has recognized that BART is a unique entity and it has empowered BART to procure its electricity directly from multiple sources. Just last year the legislature added explicit language to encourage BART to procure its electric load from renewable energy sources. Allowing a BART-specific LCFS pathway and actual CI value in implementing the LCFS program is consistent with this statutory program and public policy. It also encourages the greening of BART's power which further reduces GHG emissions in the State.

Please contact the undersigned or Holly Gordon, BART's Sustainability Group Manager at 510-464-6792 or hgordon@bart.gov if you have any comments, concerns or questions.

Regards,

Davis Wright Tremaine LLP

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KES: lah

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