



October 25, 2016

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Dear Mr. Corey,

Recently we met with the ARB staff to discuss our concerns with the proposed removal of fuel cells from the list of emission sources without a cap-and-trade compliance obligation (i.e., Section 95852.2). We are writing to update you on these discussions with the staff and express our appreciation for your staff's attention to this important issue.

In the original cap-and-trade rulemaking, the ARB included fuel cells in Section 95852.2. The significance of including fuel cells in Section 95852.2 and the letter you sent to Bloom Energy dated May 23, 2013 confirming the treatment of fuel cells cannot be overstated-- it offers a clear demarcation that fuel cells are GHG reducing with co-benefits that afford them unique treatment in recognition of these important attributes. The proposed amendments to the cap-and-trade program currently under Board consideration make a fundamental change to the regulation that will disrupt the market success of GHG reducing fuel cells. The proposed change would remove fuel cells from Section 95852.2 and lead to direct regulation of a small number of operators, but impact the perception of fuel cells for all customers regardless of whether they are a covered entity.

We appreciate the ARB's goal to fully account for all emissions and that the phase in of the natural gas sector may lead to a partial minimization of cap-and-trade costs compared to other sources over 25,000 MT. We also appreciate that delay in the implementation of the natural gas compliance costs are a source of concern. However, any perceived preferential treatment a small number of fuel cell systems may currently receive is temporary and will in short order be accounted for via the full implementation of natural gas sector compliance. As the compliance costs are implemented and the natural gas sector is subject to a growing allowance consignment ratio, at some point between 2020 and 2030, fuel cell operators will face the same GHG costs as sources directly regulated by the cap-and-trade program. In fact, as recently as last Friday, October 21st, the ARB staff proposed a 100% consignment date by 2021, which would ensure that sources not otherwise directly regulated by the cap-and-trade program bear 100% of the natural gas utility's carbon costs by 2021. Thus, as the natural gas sector is transitioned into the cap-and-trade program, natural gas fuel cells will face indirect compliance costs paid to the utility and will be accounted for under the cap. As outlined in your 2013 letter, such compliance costs associated with emissions from natural gas use will effectively spur private investment in efficient technologies, such as fuel cells.

Further, directly regulating a small amount of emissions from just a few entities presents three significant challenges for the fuel cell industry. First, an important

point of comfort for all customers is that fuel cell systems will not be directly regulated by the cap-and-trade program because they reduce GHG emissions. There is a broad perception that regulation under the cap-and-trade program means that the technology has no GHG-benefits because the cap-and-trade program is designed to discourage dirty technologies. We appreciate that this is not the ARB's intent, but we want to make sure that the ARB is aware of the perception.

Second, customers would need to factor into their purchase decision the potential overhead costs of retaining staff to ensure and monitor compliance - costs that would be perceived as directly resulting from the purchase of a fuel cell that is otherwise cleaner than their current source of power. Direct regulation will not only pose a higher cost as small participants cannot manage their administrative costs as well as the natural gas sector, but there will be an intangible cost in the form of a new regulatory burden and risk.

Third, direct regulation of fuel cells is counterproductive to the broader goals of AB 32 and AB 197. Fuel cell systems are much lower GHG emissions sources than conventional natural gas generation. There is no combustion, and as a result, fuel cells also emit no criteria pollutants. It is precisely the type of activity that will "complement federal and state ambient air quality standards and reduce toxic air contaminant emissions" envisioned in AB 32 (i.e., Cal. Health and Safety Code Sec. 38562(b)(4)). Retaining fuel cells in Section 95852.2 is also consistent with the direction in AB 197 to encourage direct emissions reductions at large stationary sources (i.e., Cal. Health and Safety Code Sec. 38562.5(a)). Retaining fuel cells in Section 95852.2 is a longer-term step that will lead to GHG reductions and reductions in criteria pollutants.

We urge you to recognize that direct regulation of fuel cells can actually lead to foregone emission reductions associated with fuel cells and that any associated emissions will be managed in short order via full consignment in the natural gas sector.

Thank you again for your and your staff's attention to this important matter.

Sincerely,



Erin Grizard

cc: Jason Gray
Mary Jane Coombs
David Allgood
David Hults