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California Air Resources Board
1001 I Street
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RE: Clean Energy Comments to the Proposed Amendments to Mandatory Greenhouse Gas Reporting Regulation ("MRR") and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms ("Cap and Trade")

Dear ARB Staff,

Clean Energy appreciates the opportunity to submit comments on the most recent proposal of amendments to the Mandatory Greenhouse Gas Reporting Regulation ("MRR") and California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms ("Cap and Trade"). Clean Energy remains committed to supporting the Air Resources Board's initiatives to curb greenhouse gas emissions across the State of California. Clean Energy appreciates ARB's acknowledgement and proposed resolution of previously raised issues with respect to the treatment of LNG vehicle fuel and biomethane vehicle fuel under both the MRR and Cap and Trade. We continue to have concerns and recommendations regarding the proposed regulation as outlined below.

§ 95122 Amendment of Point of Regulation for Imported LNG

Clean Energy commends the ARB's acknowledgement and proposal to address the unintended competitive advantage that the MRR currently gives to imported LNG vehicle fuel versus California produced LNG. However, we are concerned that there is a potential loophole in the proposed regulation. Changing the regulated party from the California consignee to the importer of LNG does in theory "level the playing field" *assuming* that out of state LNG producers continue to act as the "importers" of the fuel to California. However, in order to avoid potential MRR compliance costs, an out of state LNG producer could conceivably "contract away" their liability by simply transferring title to the LNG customer at the out of state LNG plant (where shipments are picked up) or contracting through a third party logistics firm to accept title and risk of loss to the LNG at the out of state plant (and act as the importer). As long as the customer or logistics firm does not import and consume enough fuel in the aggregate to trigger a reporting obligation under MRR (and/or a compliance obligation under Cap and Trade), then the LNG shipments would presumably continue to have competitive advantage versus LNG produced in California that does carry such a compliance obligation and cost.

Therefore, we would urge the ARB to consider amending the proposed regulation so that an LNG producer that produces LNG vehicle fuel that is exported into California is subject to the MRR and Cap & Trade with respect to those LNG exports regardless of the entity that holds title to the product at the time it crosses the California State line. Potentially this could be achieved by modifying the definition of importer with respect to LNG imports to state that, in the event that the importer does not otherwise trigger MRR or Cap & Trade with respect to the LNG

volumes imported (due to the small size), that the producer of that LNG will be considered the importer for purpose of MRR and Cap & Trade.

This enhanced definition will ensure that the emissions of all LNG consumed in California are accurately captured and reported regardless if the fuel was produced in California or imported from out of state. Strict regulation of this magnitude is necessary to ensure that no entity delivering fuel for end use in California is able to avoid regulatory requirements and ensure a level playing field.

§ 95852.1.1 Eligibility Requirements for Biomass-Derived Fuels.

The eligibility requirements in §95852.1.1 for biomass-derived fuels continue to apply only to biogas and biomethane among all biofuels. Under the regulations, biomethane is the only biofuel that is required to demonstrate compliance with complex “resource shuffling” rules in order to obtain exempt status. The proposed regulations maintain this inequitable treatment. We urge the ARB to treat all biofuels the same – either all biofuel should be compelled to comply with resource shuffling eligibility requirements or no biofuels should be required to comply with these requirements. There is no scientific or policy justification we are aware of that would support singling out biomethane and making biomethane, alone among all biofuels, subject to resource shuffling requirements when used as a vehicle fuel.

For this reason, we strongly urge the Air Resource Board to simply make biomethane vehicle fuel exempt under the MRR and Cap and Trade on equal footing with all other biofuels when used in transportation. The Regulation should promote the growth of all renewable fuel and not give any manner of preferential treatment to one fuel over another. We recognize that biomethane is also used in California as a fuel for renewable power generation. We would support continued application of resource shuffling requirements to biomethane used for power generation.

In the event that the ARB decides to apply resource shuffling requirements evenly across all transportation biofuels, we would urge the ARB to further clarify and expand the resource shuffling rules as follows:

- (1) Any biofuel should be exempt from MRR and Cap & Trade through 2020 if the certified LCFS pathway(s) through which the biofuel is delivered to California demonstrates a 20% reduction from petroleum fuel. A 20% reduction represents 2x what the target is for the entire fuel supply for California by 2020 under the LCFS. It would appear axiomatic to us that a biofuel that is well ahead of the compliance schedule under LCFS should not also carry a Cap and Trade obligation.
- (2) Biomethane voluntarily recovered from landfills or other biogas sources that is not required to be captured under EPA’s New Source Performance Standards (NSPS) or relevant state law that is delivered to California for end use as transportation fuel should automatically be deemed exempt.

- (3) Biomethane from projects that commenced injection of the product into the pipeline after Jan 1, 2010 should be considered exempt. The rationale for this exemption is that, since 2010, the price of fossil fuel natural gas has been insufficient to sustain production of biomethane from any biogas resource. In addition, the California RPS market (the largest market for biomethane historically) has been closed to product produced outside the State since 2012. In order to enable these projects to access the California vehicle fuel carbon market and sustain operations, they should be deemed exempt. Failure to do so risks pushing these projects into failure, which would result in flaring or venting of the methane and run counter to California GHG reduction goals.

§ 95122(b)(8) Accounting for Biomethane CNG.

Clean Energy owns and operates an extensive network of CNG stations through which both fossil CNG and biomethane (or renewable CNG) are dispensed under Clean Energy's Redeem trademark. Clean Energy has contracts with a portfolio of producers to purchase this renewable natural gas that is scheduled through the SoCal Gas and PG&E distribution systems and sold to each Clean Energy customer. Many of these customers have signed biomethane contracts for a guaranteed supply.

Unfortunately, we remain concerned that the regulations in MRR Section 95122(b)(8) continue to make it difficult for a biomethane CNG customer to avoid imposition of Cap and Trade compliance costs on the biomethane CNG they purchase, notwithstanding the fuel's exemption under the regulations. As written it is left entirely to the discretion of the utility whether the utility elects to report the biomethane as exempt (and obtain verification of the exemption) or simply account for it as if it was fossil fuel natural gas. This makes it likely that a customer purchasing biomethane directly from Clean Energy will be assessed a compliance charge by the utility *as if the customer was consuming fossil fuel natural gas*.

We strongly urge the ARB to mandate that the utility allow biomethane suppliers and consumers who supply and/or consume biomethane through the utility pipes to provide the utility with verification of the exempt status of the fuel. The utility should also be forbidden from imposing Cap and Trade compliance costs on a biomethane purchaser that has demonstrated, in accordance with the regulation, that the fuel they are purchasing is exempt under the regulations.

If the proposed regulations are adopted as written, the implications for Clean Energy, our customers and the growing biomethane vehicle fuel industry in general are significant. Customers will be subject to increases in transportation fuel costs as a result of the utility's cost of compliance – and be compelled to pay for phantom GHG emissions attributed to the fuel they purchase. Therefore, with respect to the sale of biomethane CNG through the LDC, we believe the ARB should require the utilities to report the volumes of biomethane sold through its system by third parties as exempt; provided the biomethane supplier provides all contracts, transaction confirmations, and credit generation support to the utilities to verify the volumes of biomethane sent through their systems.

§ 95852 (a)(1) Limited Exemption for Emissions from LNG Suppliers

We appreciate that the ARB has proposed a limited exemption for LNG suppliers from Cap and Trade obligations during 2015, 2016 and 2017. As we understand the proposed regulation, LNG suppliers that qualify for the exemption will be allocated credits in equivalent volume to those they retired to meet their 2016 obligation and in equivalent volume to those needed to meet the compliance obligation for 2017 and 2018. We believe we will qualify for this exemption. However, we remain concerned that we will incur a significant cost in 2016 to purchase credits to cover our 2015 compliance obligation that we will never be able to recover. This is a result of the fact that we do not anticipate having a need for the credits that will be issued to replace those that we purchased and retired. As such, we would request the ARB modify the exemption to allow entities that qualify for the exemption to sell the credits that they are allocated for the 2015 compliance obligation, or pledge them to the ARB auction. This will enable us to recover the costs we incur purchasing credits to cover our 2015 compliance obligation.

Conclusion

Clean Energy is committed to helping California achieve its overall carbon reduction goals and will continue to support the ARB in its efforts in managing the MRR and Cap and Trade programs. Clean Energy appreciates the ARB's commitment to fixing issues in the MRR and Cap and Trade program that have been raised to this point and we recognize the immense complexity of the task. We believe our recommendations on revision of the MRR and Cap and Trade Regulation will strengthen the programs, avoid unintended consequences, ensure that biofuels are treated equally and that in-state and out-of-state LNG producers are treated equally with respect to their California carbon emissions. The Regulation must be equally applied across all fuels and market participants to ensure California meets its carbon reduction goals in an equitable manner.

Please feel free to reach out to us if you have any questions.

Sincerely,



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Clean Energy Renewables



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