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August 30, 2018

By Electronic Submittal

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Proposed Amendments to the Low Carbon Fuel Standard, as Modified by Second 15-Day Changes

Dear Clerk of the Board:

I write on behalf of the San Francisco Bay Area Rapid Transit District ("BART") to offer comments to the California Air Resources Board ("CARB") on CARB staff's proposed amendments to the Low Carbon Fuel Standard ("LCFS") regulation, 17 Cal. Code Regs. §§ 95480-95479 ("Regulation"), as modified by staff's second 15-day modifications noticed August 13, 2018.

BART is a public transportation system serving the San Francisco Bay Area with electric rapid transit passenger rail service. As the operator of a "fixed guideway system," BART generates credits under the existing LCFS Regulation. BART provides over 430,000 passenger trips each weekday, and nearly 129 million trips annually. Consequently, BART service is among the most significant factors affecting the carbon intensity ("CI") of the transportation sector in the Bay Area. As outlined in BART's prior comment letter submitted in this rulemaking process, BART is actively pursuing a goal of both reducing the energy consumption and greenhouse gas ("GHG") emissions associated with its transit service, while also seeking to increase its ridership. Notably, BART has entered into multiple power purchase agreements ("PPAs") under which it will procure electricity to power its system from renewable and low-CI sources such as solar and wind electric generating facilities, and Asset-Controlling Suppliers ("ACSs").

BART appreciates CARB's second 15-day modifications to the proposed new LCFS Regulation, noticed on August 13, 2018, which make several clarifying changes requested by BART in its prior comment letters. Notably, the second 15-day modifications added the defined term "Low-Carbon Intensity (Low-CI) Electricity," which would include "any electricity that is determined to have a carbon intensity that is less than the average grid electricity for the region, including but not limited to an 'eligible renewable energy resource' as defined in Public Utilities Code Sections 399.11-399.36 under the California Renewables Portfolio Standard." The definition of "Low-CI Electricity," coupled with changes throughout the regulation to replace references to "renewable energy" with references to "Low-CI

Electricity,” make it clear that CARB intends for the LCFS to recognize the low-carbon characteristics of Low-CI Electricity.

BART is concerned, however that a change made in the second 15-day modifications to the section of the LCFS Regulation that would provide for book-and-claim accounting may be in conflict with CARB’s intent to recognize Low-CI Electricity from sources other than “eligible renewable energy resources” (“ERRs”) under the state’s Renewables Portfolio Standard (“RPS”). Specifically, Section 95488.8(i)(1)(A) of the proposed Regulation was modified in the recent 15-day changes to require the following in order for electricity imports from out of state to be eligible for book-and-claim accounting:

The low-CI electricity must be supplied to the grid within a California Balancing Authority (or local balancing authority for hydrogen produced outside of California) or alternatively, meet the requirements of California Public Utilities Code section 399.16, subdivision (b)(1).

The statutory reference to Public Utilities Code Section 399.16(b)(1) refers to the delivery requirements for “Bucket 1” product under the RPS. However, Section 399.16(b)(1) expressly requires that a generation source must be an ERR in order to qualify.¹ This is in direct conflict with the definition of “Low-CI Electricity” in the proposed LCFS Regulation, which extends to low-carbon sources of electricity other than ERRs. Additionally, the delivery requirements of Section 399.16(b)(1)(A) would create other administrative issues if applied to imports from non-ERRs, such as deliveries of ACS electricity. For example, deliveries of ACS electricity are not accompanied by the type of highly granular generation or metering data that is typically required to demonstrate compliance with 399.16(b)(1)(A).

In order to clarify that out-of-state sources of Low-CI Electricity that do not qualify as ERRs may be eligible for book-and-claim accounting under the LCFS, CARB should modify Section 95488.8(i)(1)(A) of the proposed Regulation to refer to the definition of “direct delivery of electricity” under Section 95102(a) of CARB’s Mandatory Reporting Regulation (17 Cal. Code Regs. §§ 95100-95163, hereinafter “MRR”). As defined in the MRR, “direct delivery of electricity” requires the following:

“Direct delivery of electricity” or “directly delivered” means electricity that meets any of the following criteria:

The facility has a first point of interconnection with a California balancing authority;

The facility has a first point of interconnection with distribution facilities used to serve end users within California balancing authority area;

The electricity is scheduled for delivery from the specified source into California balancing authority via a continuous physical transmission path from the interconnection of the facility in the

¹ Pub. Util. Code § 399.16(b)(1).

balancing authority in which the facility is located to a sink located in the State of California; or

There is an agreement to dynamically transfer electricity from the facility to a California balancing authority.²

This definition was developed by CARB for use in reporting electricity deliveries from “specified sources” under the MRR, and is a better fit for the reporting of non-ERR imports of Low-CI Electricity under the LCFS Regulation.

BART recommends that Section 95488.8(i)(1)(A) of the proposed Regulation be modified as follows (proposed additions shown in underline):

Reporting entities may report low-CI electricity used as a transportation fuel or as an input to hydrogen production delivered through the grid without regard to physical traceability if it meets all requirements of this subarticle. The low-CI electricity must be supplied to the grid within a California Balancing Authority (or local balancing authority for hydrogen produced outside of California) or alternatively, meet the delivery requirements of California Public Utilities Code section 399.16, subdivision (b)(1), or the definition of “direct delivery of electricity” provided in Title 17, Division 3, Chapter 1, Subchapter 10, Article 2 (Mandatory Greenhouse Gas Emission Reporting), section 95102(a) of the California Code of Regulations.

If CARB chooses not to modify the proposed LCFS regulation in another round of 15-day modifications, BART respectfully requests that CARB clarify in the Final Statement of Reasons (“FSOR”) the following two issues: (1) the reference to Public Utilities Code Section 399.16(b)(1) in Section 95488.8(i)(1)(A) of the LCFS Regulation is intended to incorporate only the delivery requirements of 399.16(b)(1), and not the requirement that an electric generation source be an Eligible Renewable Energy Resource under the RPS, and (2) imports from Low-CI Electricity sources that do not provide the necessary generation or meter data for reporting compliance with the requirements of Public Utilities Code Section 399.16(b)(1) may nevertheless be eligible for book-and-claim accounting under Section 95488.8(i)(1)(A) of the LCFS Regulation if the reporting entity provides other information (such as eTags) demonstrating that the imported electricity satisfies the “direct delivery of electricity” requirements under the MRR.

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² 17 C.C.R. § 95102(a).

Please contact me with any questions or concerns about these comments. Again, BART fully supports CARB's goal of reducing California's GHG emissions, and to this end appreciates CARB's efforts to continue to improve the LCFS Regulation.

Best regards,

/s/ Thomas W. Solomon