Alexandria Moffat
Clean Transportation Director

8690 Balboa Avenue
SanDiego, CA 92123

phone: (619) 676-8532
email: Amoffat@sdge.com

August 27, 2024

Clerk's Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814
Submitted electronically at: https://ww2.arb.ca.gov/lispub/comm/bclist.php

Re: Proposed Amendments to the Low Carbon Fuel Standard Regulation

Dear Chair Randolph and Honorable Board Members:

SDG&E appreciates this opportunity to comment on the Low Carbon Fuel Standard ("LCFS") regulation and provide feedback for CARB Board member consideration. SDG&E supports many provisions in the 15-Day Changes[1] including, as discussed in comments filed through the California Electric Transportation Coalition in February 2024 on the 45-day amendments. However, SDG&E continues to have significant concerns and recommends changes to the 15-Day Changes to provide clarity and address serious operational challenges.[2] These modifications are discussed below and reflected in the Appendix. Specifically:

- **Electric Distribution Utility ("EDU") Definition:** The current EDU definition in Section 95481 is drastically outdated, relying on 2017 electric sales, and should be modified to 1) rely on 2022 annual electric sales and, 2) accordingly, recalibrate EDU sizing.
- **Pre-Approved Holdback Project List:** Bifurcating equity and other project types in Section 95483(c)(1)(A)(5) unnecessarily complicates rather than streamlines the list of pre-approved projects. The two lists should be consolidated, with a 75% equity requirement.
- **Base Credits to Original Equipment Manufacturers ("OEMs"):** CARB must resolve ambiguity regarding the potential carveout in Section 95483(c)(1) for OEMs by:
    - Ensuring that any reallocation of base credits will protect EDU holdback funding
    - Establish guardrails around the Executive Officer's discretion via a one-time option by March 15, 2025, and Board oversight.
- **Administrative Cost Caps:** CARB should maintain the cap for both the holdback projects and the statewide rebate program at 10%, as this is currently accepted by both CARB and the CPUC. There is no data to support lowering the cap to 7%.

[1] *See* "15-Day Changes," posted August 12, 2024, at: https://ww2.arb.ca.gov/rulemaking/2024/lcfs2024.

[2] SDG&E has also signed onto comments on the 15-Day Changes filed separately and concurrently with the California Electric Transportation Coalition; the Joint California Utilities; and Southern California Gas Company.

1) Definition of Electric Distribution Utilities in Section 95481 *Definitions and Acronyms* Must Be Updated to Reflect the Most Current Electric Sales

Currently, SDG&E overpays into the statewide Clean Fuel Reward ("CFR") program relative to the base credits it receives. SDG&E requests that CARB revise the definition of Electric Distribution Utility ("EDU") in Section 95481 "Definitions and Acronyms" to rely on 2022 electric sales, rather than 2017 data. This change ensures that SDG&E is defined as medium investor-owned utility ("IOU") and have a comparable contribution to the statewide program as similarly sized utilities. In the Initial Statement of Reasons released December 19, 2023,[3] CARB staff states, "San Diego Gas & Electric is re-defined to have a comparable contribution to the statewide program to similarly sized public utilities." However, this change was not in the proposed regulation. CalETC identified this discrepancy in 45-day comments submitted on February 20, 2024. The 15-Day Changes still fails to update the EDU definition.

Under the regulation, "The EDU or its designee is the credit generator for base credits for the portion of residential EV charging assigned to that EDU by the Executive Officer."[4] Each EDU's assignment of base credits is calculated according to Section 95486.1(c)(1), which results in SDG&E receiving a similar portion of base credits as the Los Angeles Department of Water and Power ("LADWP") – a <u>medium</u> publicly owned utility (POU). However, under the current regulation and as written in the 15-Day Changes, SDG&E is defined as a <u>large</u> IOU and contributes 67% of LCFS credit proceeds to the Clean Fuel Reward program. Therefore, while SDG&E receives equivalent base credits as a medium POU, SDG&E remits the same proportion of revenues to the statewide program as a large IOU.

Since base credits are directly attributable to EV charging, the EDU definition is aligned with electric sales. As in the current regulation, the 15-Day Changes defines a large IOU or POU as having annual load served as equal to or more than 10,000 Gigawatt-hours ("GWh") in 2017, while a medium IOU or POU has 700 to 10,000 GWh. However, this data is outdated and should be updated to reflect the most currently available data to show "the estimated electricity use in kWh of non-metered residential plug-in electric vehicles assigned to an EDU for the reporting period."[5] The annual sales reflected for 2022 in the California Energy Commission's 2023 Integrated Energy Policy Report ("IEPR") Planning Forecast highlight the discrepancy:

EDU	2022 Electric Sales	Definition under LCFS
PG&E	88,602 GWh	Large IOU
SCE	97,680 GWh	Large IOU
SDG&E	**17,867 GWh**	**Large IOU**
LADWP	**21,842 GWh**	**Medium POU**
SMUD	10,662 GWh	Medium POU

[3] See *Appendix E: Purpose and Rationale of Proposed Amendments for the Low Carbon Fuel Standard Requirements* ("ISOR"), at p. 15. Available at: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/lcfs_appe.pdf.

[4] Section 95483(c)(1)(A)

[5] Section 95486.1(c)(1)(A)

Therefore, SDG&E urges CARB to update the thresholds for electric sales to align with the most recently available historical data (2022) published by the CEC. SDG&E proposes changes to the 15-Day Changes in the Appendix.

2) The Two Holdback Project Lists in Section 95483(c)(1)(A)(5) *Restrictions on Use of Holdback Credits* Should Be Consolidated into a Single List

The current regulation[6] identifies a single list of projects that the EDUs may fund through holdback credit proceeds, with targets for equity. The ISOR indicates staff's intent to enhance the list of pre-approved projects to include the priorities set from the Scoping Plan as well as community input.[7] While SDG&E agrees that the list in pre-approved <u>equity</u> projects is enhanced, the 15-Day Changes introduces a second non-equity list categorized as "Other Holdback Projects" as Section 95483(c)(1)(A)(5)(b).

SDG&E recommends that the two lists be consolidated into one and that project spending be considered towards the EDUs' equity allocation compliance requirements if it benefits the communities and individuals defined in the equity holdback section. To ensure that the utilities are only deploying projects that CARB supports for equity communities and individuals, SDG&E recommends that the single project list must be used for equity projects and may be used for non-equity projects in addition to other non-equity projects that further transportation electrification in California as defined by 95491(e)(5). This approach is more straightforward, minimizes opportunity for conflicting interpretations, and provides certainty on expectations around CARB's priorities while still allowing flexibility for utilities to propose non-equity programs that are best suited to their specific service areas and customers.

SDG&E proposes revisions to the 15-Day Changes in the Appendix to reflect these comments.

3) Ambiguity Regarding the OEM Carveout in Section 95483(c)(1) *Residential EV Charging* Must be Resolved

The 15-Day Changes introduces an optional carveout of residential base credits for Original Equipment Manufacturers ("OEMs"). Specifically, "The Executive Officer may direct up to 45% of base credits to eligible OEMs, if the share of new zero emission vehicle sales for model year 2024 zero emission vehicles certified under California Code of Regulations, title 13, section 1962.2 is less than 30 percent."[8] If the Executive Officer directs base credits to eligible OEMs, the 15-Day Changes stipulates that the requirements of section 95483(c)(1)(A)2 – *i.e.*, for opt-in EDUs to contribute a minimum percent of base credits for residential EV charging (or net base credit proceeds) toward a Clean Fuel Reward program – no longer apply. There are several challenges that must be resolved to avoid negative consequences.

---

[6] Section 95483(c)(1)(A)(6)(a)

[7] ISOR, at pp. 14-15.

[8] 15-Day Changes, at Section 95483(c)(1)(B)

a) Any base credits allocated to OEMs come from the EDU minimum percent CFR contribution and preserve EDU holdback allocation

SDG&E believes that CARB's intent is that any base credits that would be allocated to OEMs would essentially take from the minimum percent of base credits for residential EV charging (or net base credit proceeds) that would have otherwise been remitted to the statewide program. However, the plain language of the 15-Day Changes stipulates otherwise. Specifically, "If the Executive Officer assigns a portion of base credits to OEMs pursuant to section 95483(c)(1)(B), **the EDUs are assigned *<u>the remaining base credits</u>***" (emphasis added).[9] This wording indicates that the Executive Officer would assign 45% of the entire pool of base credits to OEMs and then divide the remaining 55% among the EDUs.

Further, the 15-Day Changes provides that, "If the Executive Officer directs base credits to eligible OEMs, the requirements of section 95483(c)(1)(A)2. do not apply."[10] Simply put the requirements for the EDU contributions to the CFR do not apply. However, this section contains the requirements for EDU contribution to the statewide program:

EDU Category	% Contribution
Large Investor-owned Utilities	50%
Large Publicly-owned and Medium Investor-owned Utilities	25%
Medium Publicly-owned Utilities	10%
Small Publicly-owned Utilities and Small Investor-owned Utilities	0%

While these requirements would cease to apply as currently written in the 15-Day Changes, they provide a level of clear proportionality that is absent from the OEM carveout.

This scenario could significantly decrease the allocation of base credits for EDUs that currently remit less than 45% of their credit proceeds to the statewide program. For example, small POUs and small IOUs currently have 0% contribution to the statewide program and, therefore, holdback 100% of LCFS revenues; the 15-Day Changes suggests that their allocation of base credits could be reduced. This is a critical nuance in language that can significantly reduce EDU holdback funding rather than simply redirect CFR funding. If the intent is to allocate CFR funding to the OEMs, SDG&E recommends stating that clearly in the language so that no EDUs are adversely impacted by the OEM carveout.

Therefore, CARB should (1) establish in the regulation that individual and aggregate utility holdback credits will not be reduced as a result of this directive, and (2) clarify in the regulation

[9] 15-Day Changes, at Section 95483(c)(1)(A)

[10] 15-Day Changes, at section 95483(c)(1)(B).

that in redirecting credits to the OEMs, the Executive Officer would allocate only that portion of the credits dedicated for CFR according to the table in section 95483(c)(1)(A)(2), but not to exceed 45% of the total base credits. SDG&E proposes such clarifications in Appendix A.

b) The Executive Officer should have deadlines for initiating the allocation of base credits to OEMs

As written, the 15-Day Changes enables the Executive Officer to direct base credits to OEMs at any time. Should the final order allow the Executive Officer the discretion to allocate base credits to OEMs, SDG&E recommends that the regulation stipulate a deadline to allow certainty and cost-effectiveness for the statewide rebate program. Otherwise, the EDUs risk developing, funding, and administering a program only to have it lost funding upon the Executive Officer's decision to redirect base credits to OEMs. This concern is especially acute considering the shift in the statewide program's complete focus from light-duty to medium- and heavy-duty EVs. SDG&E recommends that the 15-Day Changes be revised to allow the Executive Officer to issue a one-time decision no later than the March 15, 2025. See the Appendix for proposed changes.

4) The Current 10% Cap on Administrative Costs Should be Preserved in Section 95483(c)(1)(A) *Base Credits to EDUs*

The 15-Day Changes maintains a reduced cap of 5% on administrative costs to support the Clean Fuel Reward program[11] and 7% for holdback credit projects.[12] SDG&E recommends that the 15-Day Changes preserve the cap on administrative costs for both the holdback projects and rebate program at 10%, as this is currently accepted by both CARB and the CPUC.

Based on how utilities currently track and report program administrative costs, the reduction of allowable administrative costs for utility holdback programs from 10% to 7% in the proposed amendments will make it extremely difficult, if not impossible, to administer these programs. Smaller utilities may only be able to implement a portfolio of small programs that will never benefit from the economies of scale that larger programs achieve. Meanwhile, CPUC shift in policy away from utility-specific ratepayer-funded programs, with a sunset of December 31, 2026, for these programs, places the larger IOUs in a similar predicament. While there is an option in the Regulation that allows the utilities to exceed the administrative cost caps with advanced approval from the Executive Officer, this is likely to create administrative challenges for CARB and utility staff if each utility must make a request each year that they expect to exceed the proposed 7% cap.

SDG&E recommends that, for medium and large EDUs, the cap on equity holdback administrative costs should revert to 10% as allowed in the current regulation. Please see the Appendix for all proposed revisions.

---

[11] 15-Day Changes, at Section 95483(c)(1)(A)(4)

[12] 15-Day Changes, at Section 95483(c)(1)(A)(5)(c)

SDG&E appreciates the opportunity to provide comments on this important 15-Day Changes. If you have any questions, please do not hesitate to contact me at any time.

Sincerely,

Alexandria Moffat
Clean Transportation Director

Appendix

Proposed Revisions

Proposed text deletions are in bold and strikethrough (**~~abcd~~**)

Proposed text additions are in bold and underlined (**<u>abcd</u>**)

<u>Appendix A</u>
Proposed Revisions

SDG&E proposes the following modifications to the 15-Day Changes (additions in **<u>underline</u>** and deletions in **~~strikeout~~** format; numeration follows that of the 15-Day Changes):

<u>Section 95481. Definitions and Acronyms.</u>

"Electrical Distribution Utility" means an entity that owns or operates an electrical distribution system, including:

1. a public utility as defined in the Public Utilities Code section 216 (referred to as an Investor-Owned Utility, or IOU); or
   A. "Large Investor-owned Utility" means an IOU with annual load served equal to or more than ~~10,000~~<u>25,000</u> Gigawatt-hours (GWh) in ~~2017~~<u>2022</u>;
   B. "Medium Investor-owned Utility" means an IOU with annual load served of less than ~~10,000~~<u>25,000 GWh</u> and equal to or more than ~~700~~<u>15,000</u> GWh in ~~2017~~<u>2022</u>;
   C. "Small Investor-owned Utility" means an IOU with annual load served equal to or less than ~~700~~<u>15,000</u> GWh in ~~2017~~<u>2022</u>.
2. a local publicly-owned electric utility (POU) as defined in Public Utilities Code section 224.3;
   A. "Large Publicly-owned Utility" means a California POU with annual load served equal to or more than ~~10,000~~<u>15,000</u> Gigawatt-hours (GWh) in ~~2017~~<u>2022</u>;
   B. "Medium Publicly-owned Utility" means a California POU with annual load served of less than ~~10,000~~<u>15,000</u> GWh and equal to or more than ~~700~~<u>5,000</u> GWh in ~~2017~~<u>2022</u>;
   C. "Small Publicly-owned Utility" means a California POU with annual load served of less than ~~700~~<u>5,000</u> GWh in ~~2017~~<u>2022</u>. or (C) an Electrical Cooperative (COOP) as defined in Public Utilities Code section 2776

<u>Section 95483(c)(1)(A)(5). Restrictions on Use of Holdback Credits.</u>

5. *Restrictions on Use of Holdback Credits*. Documentation of adherence to the following restrictions must be included in the annual report submitted pursuant to section 95491(e)(5)(A).
   a. *Holdback Credit ~~**Equity**~~ Projects*. At least 75 percent of holdback credit proceeds must be used to support transportation electrification for the primary benefit of or primarily serving disadvantaged communities and/or low-income communities and/or rural areas or low-income individuals eligible under California Alternative Rates for Energy (CARE) or Family Electric Rate Assistance Program (FERA) or the definition of low-income in Health and Safety code section 50093 or the definition of low-income established by a POU's governing body or a community in which at least 75 percent of public school students in the project area are eligible to receive free or reduced-price meals under the National School Lunch Program, or a community located on lands belonging to a state or federally recognized California Indian tribe. These projects may include:

i. Electrification of drayage trucks as well as other medium-, heavy-duty, or off-road vehicles including school and transit buses.
ii. Investment in public EV charging infrastructure and EV charging infrastructure in multi-family residences.
iii. Investment in electric mobility solutions, such as EV sharing and ride hailing programs.
iv. Additional rebates and incentives for low-income individuals beyond existing local, federal and State rebates and incentives for: purchasing or leasing new or previously owned EVs; installing EV charging infrastructure in residences; and offsetting costs for residential or nonresidential EV charging.
v. Promoting use and additional incentives for use of public transit and other clean mobility solutions, via charging equipment or infrastructure for the following categories:
   I. EV sharing and ride hailing programs,
   II. Electrification of public transit and school buses, including battery swap programs, and
   III. Use or ownership of neighborhood electric vehicles, eBikes, eScooters, eMotorcycles, and other micromobility solutions.
vi. Re-skilling and workforce development for transportation electrification and electric vehicle infrastructure applications, developed in coordination with the California Workforce Development Board or local workforce development agencies.
vii. Investments in grid-side distribution infrastructure necessary for ~~medium- and heavy-duty~~ EV charging.
viii. Transportation electrification projects that are identified in, or consistent with, a Community Emission Reduction Plan created in response to AB 617.
ix. Alternatively, EDUs, in coordination with local environmental justice advocates, local community-based organizations, and local municipalities, may develop and implement other projects that promote transportation electrification in disadvantaged and/or low-income communities and/or rural areas or for low-income individuals. These alternative projects are subject to approval by the Executive Officer. Applications submitted to the Executive Officer must include, and will be evaluated for approval based on, a complete description of the project, demonstration that the project promotes transportation electrification in disadvantaged and/or low-income communities and/or rural areas or provides increased access to electric transportation for low-income individuals, and evidence that the project was developed in coordination with local environmental justice advocates, local community-based organizations, and local municipalities.

~~**b. Other Holdback Projects. Holdback projects that are not specified in subsection 95483(c)(1)(A)65.a. must follow the requirements specified in 95491(e)(5). Below are examples of pre-approved uses for these other holdback credit proceeds:**~~

~~**i. Investments in grid-side distribution infrastructure necessary for EV charging.**~~

~~**ii.**~~**x. Support for vehicle-grid integration with projects such as:**

I. Encouraging the optimization of EV charging through education in the following areas: peak demand, rate pricing, grid emergencies, potential power shutoffs, infrastructure deferral, renewable integration, and/or other signals and grid needs to provide grid and customer benefits.
II. Providing program incentives to encourage driver participation in monitored/managed charging, demand response, or vehicle-to-load / vehicle-to-grid applications.
III. Supporting the deployment and installation of bidirectional charging equipment.
IV. Other innovative approaches to promoting and managing EV charging and discharging that provides benefits to customers and the grid.

~~iii.~~xi. Hardware and software that decrease the cost of or avoid updates to infrastructure, including load management software or outlet splitting.

c. *Administrative Costs of Holdback Credit Equity Projects.* With the exception of EDUs with annual sales of less than 2000 GWh, a~~A~~dministrative costs to support the ~~development and~~ implementation of holdback credit equity projects must not exceed ~~7~~10 percent of total spending on holdback credit equity projects annually unless the EDU contracts with a community-based organization, and the exceedance is approved in advance by the Executive Officer. The request for administrative cost exceedance for a calendar year must be submitted by September 30 of the prior year. The request must include, and will be evaluated for approval based on, a complete description of the equity projects planned by the EDU, an estimate of total administrative costs relative to total spending on the projects, and evidence that the community-based organization is a non-profit organization focused on serving disadvantaged and/or low-income groups. Within 30 days of receiving a request for higher administrative costs, the Executive Officer will inform the EDU of its decision in writing. If the request is

Section 95483(c)(1). Residential EV Charging.

A. *Base Credits to EDUs*. The EDU or its designee is the credit generator for base credits for the portion of residential EV charging assigned to that EDU by the Executive Officer, except for any portion of base credits that the Executive Officer assigns to OEMs pursuant to section 95483(c)(1)(B). ~~If the Executive Officer assigns a portion of base credits to OEMs pursuant to section 95483(c)(1)(B), the EDUs are assigned the remaining base credits.~~ The EDU may authorize a third party to sell the EDU's credits. The EDU or its designee must meet the requirements set forth in paragraphs 1. through 5. below, and 95491(e)(5).

B. *Base Credits to OEMs*. No later than March 15, 2025, ~~T~~the Executive Officer may reallocate some or all of the EDUs' credits that would have otherwise been allocated to the Clean Fuel Rewards contributions, not to exceed ~~direct up to~~ 45% of base credits, to eligible OEMs, if the share of new zero emission vehicle sales for model year 2024 zero emission vehicles certified under California Code of Regulations, title 13, section 1962.2 is less than 30 percent. If the Executive Officer directs base credits to eligible OEMs, **the following provisions apply:**

i. Each EDU's base credits shall be reduced by no more than the percent contribution for the applicable EDU category as specified in section 95483 (c)(1)(A)2.

ii. ~~t~~The requirements of section 95483(c)(1)(A)2 ~~**do not**~~ shall no longer apply.

iii. No further contributions to the Clean Fuel Reward program shall be made, and the administrator of the Clean Fuel Reward program shall implement the windup procedures set forth in the statewide program Governance Agreement.

iv. The OEM is the credit generator for base credits for the portion of residential EV charging assigned to that OEM by the Executive Officer pursuant to 95486.1(c)(1)(A).

v. The OEM must meet the requirements set forth in paragraphs 1. through 3. below, and 95491(e)(5).

C. ***OEM Eligibility.*** The OEM must identify itself to the Executive Officer as eligible to generate base credits. The Executive Officer may revoke the eligibility of an OEM to generate base credits if it fails to sell base credits and spend the proceeds within three years of base credit issuance. An OEM must submit any request to change base credit generation eligibility status for base credit generation by the end of the first month of the prior quarter.

D. ***Reporting Requirements.*** **The Executive Officer shall review the implementation of any OEM program and present a report to the Board annually, beginning January 1, 2027, with recommendations for continuing or decreasing allocations to the OEMs.** Documentation of adherence to the following restrictions must be included in the annual report submitted pursuant to section 95491(e)(5)(A).