SMUD®

August 27, 2024

Chair Liane Randolph and Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Sacramento Municipal Utility District's Comments on the Proposed 15-Day Changes to the Low Carbon Fuel Standard Amendments

The Sacramento Municipal Utility District (SMUD) appreciates the opportunity to provide comments on the California Air Resources Board's (CARB or Board) Proposed 15-Day Changes to the Proposed Amendments to the Low Carbon Fuel Standard Regulation issued on August 12, 2024 (Proposed Amendments).[1] The Low Carbon Fuel Standard (LCFS) serves as a critical policy tool to complement and support SMUD and others in the effort to eliminate emissions from the transportation sector.

While SMUD continues to support many elements of the Proposed Amendments, SMUD is deeply concerned about the practical implications of newly introduced provisions that would allow the Executive Officer to assign base credits to the original equipment manufacturers (OEMs). As drafted, these provisions have the potential to significantly disrupt electric distribution utility (EDU) holdback programs as well as EDU planning and implementation of the newly refocused medium- and heavy-duty (MHD) vehicle Clean Fuel Reward (CFR) program. SMUD is also disappointed that many of SMUD's and the California Electric Transportation Coalition's (CalETC) recommended revisions to the amendments issued on December 19, 2023 (45-Day Language), which were necessary to support clear, consistent, and effective implementation, were not addressed within the Proposed Amendments.[2,3]

SMUD offers the following recommendations on the Proposed Amendments and respectfully requests that CARB issue additional 15-day changes to address these issues. SMUD is additionally a signatory to the "CA Utilities" comments submitted August 27 and also supports the comments submitted by CalETC on the same date.

The Proposed Amendments must expressly clarify that any base credit allocation to OEMs would not reduce *individual* utilities' holdback credits, which provide vital support for transportation electrification investments and programs.

Under the existing regulations, EDUs are assigned base credits and contribute a specified percentage of those credits to the statewide CFR. The remaining base credits ("holdback

[1] Notice of Availability of Modified Text and Availability of Additional Documents and/or Information, Proposed Low Carbon Fuel Standard Amendments (August 12, 2024) *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/lcfs2024/15day_notice.pdf.
[2] Sacramento Municipal Utility District's Comments on the Proposed Amendments to the Low Carbon Fuel Standard (February 20, 2024) *available at* https://www.arb.ca.gov/lists/com-attach/6970-lcfs2024-AXJROgRwBTIKU1Ix.pdf.
[3] CalETC's Comments on the Proposed Amendments to the Low Carbon Fuel Standard (February 20, 2024) *available at* https://www.arb.ca.gov/lists/com-attach/6856-lcfs2024-UjFQN1Y7UGYKeFU2.pdf.

credits") are used to support specified transportation electrification investments, including investment in equity programs. Holdback credits provide crucial funding support for programs that help expand equitable access to electric vehicles (EVs) and electric mobility options without impacting ratepayers – which is increasingly important as rising costs and other factors challenge affordability across the state.

Section 95483 (c)(1)(A) and (B) of the Proposed Amendments would significantly alter the current base credit framework, allowing the Executive Officer to direct up to 45% of base credits to eligible OEMs if the share of new zero-emission vehicle sales for model year 2024 is less than 30%; EDUs would be assigned the remaining base credits if this option is exercised. The 15-Day Notice explains that if OEMs receive base credits, "utilities will no longer be required to contribute to a Clean Fuel Reward Program, and credits available for holdback equity projects are unaffected."[4]

While SMUD appreciates CARB's stated intent to preserve utility holdback credits, SMUD is deeply concerned that the Proposed Amendments, as currently drafted, could reduce individual EDUs' holdback even if the aggregate EDU allocation is unchanged. For example, under the Proposed Amendments, SMUD would contribute 25% of base credits to the CFR and retain 75% for holdback. If 45% of each EDU's base credits were reallocated to OEMs, then SMUD's holdback *would* be affected because this would decrease SMUD's holdback credits (i.e., from 75% to 55%). Such a reduction would challenge already stressed budgets and jeopardize SMUD's ability to maintain transportation electrification programs, expand EV charging infrastructure, increase electric mobility investments in low-income and equity communities, and avoid or limit rate impacts from distribution grid upgrades to support long-term growth in EV charging.

To avoid ambiguity and the risk of this adverse outcome, the Proposed Amendments must be clarified to ensure that *individual* utilities' holdback would be unaffected if OEMs are assigned base credits. SMUD's recommended revisions to section 95483 (c)(1)(B) are incorporated in the recommended revisions to the Proposed Amendments offered in the following section.

The Proposed Amendments must include additional specificity regarding the implementation of potential base credit assignment to OEMs and its impact on the CFR.

As currently drafted, the Proposed Amendments lack critical details regarding the potential base credit assignment to OEMs, which directly impacts EDUs' planning and implementation of the new MHD vehicle focused CFR. SMUD agrees with the Joint Utilities that, to avoid potentially significant disruptions in the progress of EV growth and unintended consequences, the Proposed Amendments must expressly incorporate the following:

- *A one-time deadline of March 15, 2025, for the Executive Officer to assign any base credits to OEMs, and express clarification that EDUs shall not implement the CFR if base credits are assigned to OEMs.* Upfront certainty about funding for the CFR is necessary for EDUs to develop and implement the program without risk of stranding investments or disrupting customer experience. This determination must be made with sufficient lead time ahead of the March 31, 2025, deadline for CFR transfers.
- *A deadline of January 1, 2027, for the Executive Officer to review the implementation of any OEM holdback programs and present a report to the Board with a recommendation*

[4] Notice at 5.

to either continue or decrease OEM base credits. The trigger for assigning base credits to OEMs is based, in large part, on a point-in-time assessment of ZEV sales. The Executive Officer should reevaluate the continued need for and efficacy of OEM base credit assignments and present recommendations to the Board by January 1, 2027. This is consistent with the proposed requirements for reevaluation of CFR contributions in section 95483 (c)(1)(A).

SMUD recommends the following revisions to section 95843 (c) of the Proposed Amendments to clarify the potential base credit assignment to OEMs and impacts to the CFR and utility holdback.

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, the** ~~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** 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. ~~the~~ **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.**

[…]

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).

The Proposed Amendments must resolve the inconsistencies in the rulemaking package and clarify that POUs must spend 50% of holdback credits on equity.

The rulemaking package contains inconsistencies regarding the equity spending requirements for POUs. SMUD understands that CARB's intent is to maintain the 50% spending requirement for POUs, consistent with the rationale outlined in the Staff Report and Appendix E.[5] As noted in SMUD's previous comments, maintaining the 50% holdback equity requirements appropriately allows POUs, as not-for-profit utilities that are accountable to their communities, the flexibility to prioritize programs and direct investment to areas of greatest need. In addition, for many POUs, including SMUD, LCFS is the primary source of funding for transportation electrification programs. There remains a significant need for investment in programs and infrastructure throughout the Sacramento area, and maintaining the 50% holdback equity requirements in conjunction with the increased holdback will allow SMUD to accelerate transportation electrification investments in equity communities while also supporting EV charging needs across the region.

The Proposed Amendments should incorporate necessary revisions to equity holdback project categories and to proposed EV charging verification requirements.

As identified in SMUD's comments on the 45-Day Language, several revisions to the proposed equity holdback project categories and verification requirements for EV chargers are necessary to ensure clear and practical implementation. SMUD was disappointed that these revisions were not addressed in the Proposed Amendments and respectfully requests that CARB incorporate them in subsequent 15-day changes. These revisions include:

- *Expressly clarifying that MHD EV charging infrastructure projects, regardless of geographic location, are considered equity holdback projects.* MHD EV infrastructure investments primarily benefit equity communities regardless of the infrastructure's location or proximity to such communities, since equity communities often bear a disproportionate share of pollution associated with major transportation corridors.
- *Broadening the scope of entities that EDUs may coordinate with on reskilling and workforce development programs to include workforce development agencies or community-based programs, a California community college, or a workforce strategy adopted by the Board of a POU.* SMUD coordinates with a range of entities, including community-based organizations and local community colleges, to develop transportation electrification-focused workforce development programs. Requiring EDUs to specifically coordinate with workforce development agencies, which may not be familiar with transportation electrification and community needs, is unnecessary and may slow development of programs.
- *Combining and clarifying two partially overlapping eMobility project categories***.** SMUD supports the recognition of eMobility projects, but the current structure of the Proposed Amendments creates confusion over scope and application. Clarification should be provided to ensure that e-mobility incentives and supporting investments are included.

[5] Appendix E specifies that the "holdback equity requirement for Publicly Owned Utilities would remain at 50%" and explains that the purpose of increasing holdback equity requirements for the investor-owned utilities was to align with CPUC requirements for the IOUs. Refer to the *Staff Report* at pp. 36 and 67, and *Appendix E* at pp. 14-15.

- *Retain an equity holdback project category for focused education and outreach to underserved communities.* Equity focused education and outreach projects, such as direct community outreach events and needs-based assessments, provide substantial value that should be recognized in the equity project list.
- *Remove site visit requirement for verification of covered EV chargers.* The Proposed Amendments would require site visits to confirm the accuracy of EV chargers as part of newly proposed verification requirements. These site visits would be costly and unlikely to provide any material benefits, as EV charging data can be collected without a site visit.

Further rationale for these changes, along with suggested redlines, can be found in SMUD's comments on the 45-Day Language.

Conclusion

Thank you for the opportunity to provide feedback on the Proposed Amendments. SMUD looks forward to continuing to work with CARB on amendments to strengthen the LCFS regulation.

/s/

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cc: Corporate Files (LEG 2024-0118)