PMSA
PACIFIC MERCHANT SHIPPING ASSOCIATION

November 5, 2020

Arpit Soni
California Air Resources Board
1001 I Street
Sacramento, California 95814
Submitted electronically to
https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=lcfs-wkshp-oct20-ws&comm_period=1

Subject: Comments on Low Carbon Fuel Standard Public Workshop to Discuss Potential Regulation Revisions

Dear Mr. Soni:

As you know, PMSA is working on behalf of its member companies to facilitate the implementation of Low Carbon Fuel Standard (LCFS) credit generation to allow broad and comprehensive participation by the maritime industry. Some of the proposed changes to the LCFS program may have a material impact on the ability of the maritime industry to effectively participate. PMSA provides the following comments in the hope that any changes by California Air Resources Board (CARB) to the LCFS program will ensure that companies that make the decision to invest in and deploy electrified equipment are the beneficiaries of the LCFS credits that are intended to accelerate transportation electrification.

Proposed Changes for First Fuel Reporting Entity (FRE) for eCHE and eOGV
The proposed potential LCFS Regulation revisions would identify the entity that owns the charging equipment used for fueling as first fuel reporting entity (FRE) for eCHE, eOGV, eTRU, and electric forklift. PMSA is concerned that the proposed changes do not capture or reflect the complex commercial relationships that exist in the maritime industry between tenants, users, equipment owners, and public entities, which cloud an easy application of the term "owner." The LCFS regulation does not define "owner," nor does it address how leases and property contracts that have been in place for years and decades before the creation of the LCFS program impact the property rights of ownership within the context of LCFS. In California, if marine terminals are operating at a public port, they <u>cannot legally</u> own the property on which they operate. Instead, marine terminals operate under multi-decade, long-term ground leases (typically multi-decade concessions of 20-40 years) where the marine terminal operator is typically responsible for above-ground improvements, operations, and all equipment. Due to the nature of these requirements, at the end of the lease term, ownership of any improvements made to the property by a marine terminal operator will legally revert to the public port authority.

Marine terminals and ocean carriers are responsible for the purchase and deployment of eCHE and eOGV, operate the equipment, pay the utility bill to power the equipment, and through their lease payments underwrite all physical improvements to the terminal itself. These costs and improvements are terminal specific. As the tenant operators, these operating and capital expenses are the primary responsibility of marine terminals and ocean carriers, not the public agency landlord. Additionally, one of the goals of LCFS credit generation is to offset the added cost of deploying electrified transportation equipment. A scenario in which the ocean carrier or marine terminal is not the beneficiary of LCFS credits will result in added costs that must be passed on to the consumer. In a highly competitive market, where California has lost 20% of marine cargo market share to competing states and countries in North America over the past 15 years[1], added costs will only delay transportation electrification.

Ultimately, marine terminals make the decision to deploy the equipment and pay the associated costs. These are the costs that LCFS credit generation was intended to offset. The FRE definition should not rely solely on an undefined concept of "owner" that does not reflect the reality that the property's rights and responsibilities have been transferred through long-term leases to marine terminal operators.

As an example, a marine terminal may have a long-term lease that requires the deployment of electrified equipment which would require the installation of charging infrastructure. Under a long-term lease, a marine terminal would have the obligation to install the charging infrastructure. During operation, the marine terminal would be responsible for all ongoing operation and maintenance costs. But under an undefined concept of "owner", there would be an argument over who the charging equipment owner is. As an immovable improvement to the real property, charging infrastructure would become part of the leased premises that would revert to the Tidelands Trustee at the end of the lease and be subject to reversion at the end of a lease term.

PMSA does not believe that CARB staff intends that the entity paying the cost of deployment and operation should not benefit from LCFS credit generation.

Proposed Changes to FRE for eTRU

By contrast, PMSA recommends that the LCFS regulations maintain the ability of the "owner" of the eTRU to be the FRE. This is consistent with the idea that credits should benefit the entity making the equipment deployment decision, but it is also consistent with CARB's proposal for allowing on-vehicle telematics. Unlike eCHE and eOGV equipment, eTRU equipment is not primarily based at only one specific facility. Due to its mobile nature, eTRU reporting currently functions through eTRU-mounted telematics. PMSA agrees that allowing on-vehicle telematics is a positive improvement to the regulation, and one that should be maintained for eTRUs.

It is also normal practice for eTRU owners to be charged by facility operators for plugging ocean carrier-owned eTRUs into the grid. As a result, eTRU owners represent the end of the value chain where the cost of electrification cannot be passed on. As a result, eTRU owners should be the beneficiary of LCFS credits. Nonetheless, opportunities should also exist for eTRU owners to cooperate with facility charging equipment operators to collect power consumption data when telematics are not available. Cooperatively, eTRU owners could designate the facility charging equipment operator as the FRE in such instances.

[1] https://www.pmsaship.com/wp-content/uploads/2019/12/Briefing-Paper-Loss-of-Market-Share-at-U.S.-West-Coast-Ports.pdf

To the degree that concerns over the volume of data being reported is driving this concern, there are ways that eTRU reporting can be improved or simplified depending on the needs of CARB staff. eTRUs may be aggregated by owner/location, substantially reducing the number of new equipment registration requests. Other approaches may also be possible. As CARB staff knows, PMSA collects extensive data from eTRU operators beyond what is already submitted as part of LCFS reporting. If PMSA has a better understanding of what data CARB considers crucial for registration and reporting versus data held and made available for audits, PMSA may be able to propose other registration/reporting solutions while maintaining the credit generation ability of eTRU owners. We would welcome and look forward to working closely with you to improve data reporting protocols that will improve the administration of this program.

Proposed Changes for Fuel Supply Equipment Registration
CARB staff is proposing to require that new Fuel Supply Equipment (FSE) be registered by the end of the quarter during which it will be reporting data. PMSA is concerned that this proposed requirement does not reflect actual operating conditions, and if adopted would likely result in lost reporting opportunities. In particular, eTRUs are required to be registered by location - each unit is registered as a unique unit/location pair. Most eTRUs charge at multiple locations over the course of a calendar quarter, and their route and schedule is frequently not known in advance. As highly mobile units operating under these conditions, it is not possible to gather and submit all unique equipment/location pairs before the end of the quarter. PMSA recommends that the registration requirement be modified to requiring registration requests to be submitted no later than 45 days after the close of the quarter in which the FSE will first be reporting. A 45-day period for new equipment registration will allow LCFS participants sufficient time to collect, prepare and submit all necessary data to CARB, and still provide CARB staff another 45 days to review new registration requests until the end of the 90-day reporting requirement.

Proposed Changes for Electricity Transaction Verification
PMSA does not support the addition of a third-party electricity transaction verification requirement. PMSA goes to great lengths to ensure that it has all necessary documents to support its LCFS reporting efforts. Those documents are available to CARB staff for review and audit at any time. Adding a third-party verification requirement would only increase administrative costs, which CARB staff is proposing to limit, while not increasing transparency or accuracy of LCFS reporting. PMSA would encourage CARB staff develop a program of review and audit for all LCFS participants rather than require the use of third-party verification.

Requirements for Credit Revenue Expenditures
In a letter dated April 10, 2020 (attached), PMSA provided comments to CARB staff on Draft LCFS Guidance 20-03. PMSA continues to believe that those comments address a number of the uncertainties regarding Section 95491(d)(3)(A)(7) of the LCFS regulation. PMSA recommends that CARB staff incorporate the elements of that comment letter into the future LCFS rulemaking.

CARB staff is also considering including a cap on the amount of LCFS proceeds that could be used for administrative costs. PMSA supports reasonable limits on administrative costs. However, any administrative cost limit must consider the cost of acquiring renewable energy credits separately and not as a part of administrative costs.

New LCFS Credit Generation Categories

PMSA supports the development of new LCFS categories for credit generation. The presentation of rotor sail technology is one example of novel technology that may be able to meaningfully reduce greenhouse gas emissions from vessels. The opportunity to generate LCFS credits may shorten the payback period of the technology and encourage its adoption by vessel operators. PMSA encourages CARB to develop a framework to incorporate this and similar greenhouse gas-reducing technologies into the LCFS program.

Conclusion

Thank you for the opportunity to provide comments on the proposed changes presented at the LCFS workshop. Many of the issues addressed here have additional complexities and nuances that would be better addressed in additional discussions with LCFS staff. We have appreciated PMSA would like to propose meeting with CARB staff to discuss these issues in greater detail.

Thank you for the opportunity to present this matter. If there are any questions, please contact me at (562) 432-4043 or tjelenic@pmsaship.com.

Sincerely,

Thomas Jelenić
Vice President

Attachment: PMSA Comments on Allowable Uses of LCFS Credit Proceeds, dated April 10, 2020

PACIFIC MERCHANT SHIPPING ASSOCIATION

April 10, 2020

Arpit Soni
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted electronically to: arpit.soni@arb.ca.gov

Subject**:** PMSA Comments on Allowable Uses of LCFS Credit Proceeds

Dear Mr. Soni:

As you know, the Pacific Merchant Shipping Association (PMSA) has developed a program to aggregate the Low Carbon Fuel Standard (LCFS) credit generation activity of its member companies to allow broad and comprehensive participation of the maritime sector in the LCFS program. PMSA submits these comments in order to facilitate this participation.

In regard to questions regarding LCFS allowable activities, PMSA has previously submitted comments regarding the proper application of Section 95491(d)(3)(A)(7) in letters dated November 18, 2019 and March 11, 2020 and subsequent email on April 1, 2020. This letter is submitted in response to the recently released Draft LCFS Guidance 20-03 and incorporates by reference our previous correspondence as well.

Allowable Expenditures under Section 95491(d)(3)(A)(7)

Upon review of the LCFS Guidance 20-03, PMSA believes all of the following expenses are allowable expenditures, based on the examples given (see Page 3, items 1-3):

- Purchase, lease, or rental of electric vehicles, electric equipment, or electric charging infrastructure
- Purchase, lease, or rental of specialized equipment required to service and/or maintain electric vehicles, electric equipment, or electric charging infrastructure
- Training costs for operators, technicians, and emergency response personnel associated with the deployment and operation of electric vehicles, electric equipment, or electric charging infrastructure
- Purchase of electricity for use as a transportation fuel
- Purchase of Low-CI electricity, including the purchase of Renewable Energy Certificates or renewable energy content from a utility or other electricity provider
- Incremental costs associated with labor to charge electric vehicles and/or electric equipment
- Costs associated with operation, maintenance, repair, and replacement of electric charging infrastructure
- Costs associated with maintenance, repair, and replacement of electric vehicles and/or electric equipment
- Charging network service provider fees
- Taxes, including sales and excise, on any other allowable expense
- Design and engineering costs associated with supporting infrastructure for charging, maintenance, or other support needs

- Permitting and other fees associated with development of electric charging infrastructure. These costs would include environmental studies, impact mitigation fees, or any other similar costs
- Insurance premiums associated with the incremental cost of electric vehicles, electric equipment, and electric charging infrastructure
- Purchase, installation, and maintenance of equipment needed to monitor and report electricity use for the purposes of complying with the LCFS regulation
- Purchase, installation, and maintenance of energy storage systems and/or back-up generation serving charging infrastructure
- Any incentives provided by the FSE owner to users of the FSE
- Administrative costs associated with participation in the LCFS program and/or costs to administer funds for other allowable expenses.
- Fees associated with the brokering and/or sale of LCFS credits to counterparties

This summary of allowable use of proceeds is also consistent with CARB's discussion of LCFS revenues in the At-Berth Standardized Regulatory Impact Assessment (SRIA)[1]. That SRIA specifically identifies LCFS credit revenues as offsetting infrastructure, labor, and electricity costs and directly benefiting the FSE owner. PMSA agrees with the CARB staff's interpretation of allowable uses of LCFS proceeds as consistent with these Guidelines and unless ARB provides guidance otherwise, PMSA plans on advising its member companies accordingly.

Expenditures Where the Vehicle Owner and FSE Owner are Same Entity

Many PMSA member companies are both the owner of the FSE and the electric vehicles and/or electric equipment using that FSE. Per the previous section on allowable expenditures, PMSA believes that the Guidance document (see item 3, page 3) confirms our interpretation that eligible expenditures include the costs of owning, operating, and maintaining electric equipment and electric vehicles, including the costs of electricity to charge the electric equipment and electric vehicles. PMSA seeks confirmation that the Guidance allows use of funds by the electric vehicle and/or electric equipment owner to offset its operating costs for electric vehicles and electric equipment, regardless of whether or not the vehicle/equipment owner is the FSE owner.

Timeframe for Allowable Expenditures to Support Early Adopters

PMSA interprets the Guidance document to confirm our interpretation that eligible expenditures include the recovery of past costs of credit-generating electric equipment as well as the operations and maintenance costs incurred for that electric equipment, regardless of the time those costs were initially incurred, as neither the regulation nor Guidance 20-03 place a constraint on the vintage of costs eligible to be recovered from credit revenues. Because the nature of the LCFS program requires FSE and vehicles to be deployed prior to generating credits and associated revenues, it is necessary to presume that allowable expenditures include the recovery of costs incurred prior to the generation of the credits. Allowing for past cost recovery is both supportive of early adopters of transportation electrification and is consistent with ARB Staff's treatment of LCFS revenue in their At-Berth SIRA.[1] PMSA agrees with the CARB staff's interpretation of allowable uses of LCFS proceeds as consistent

[1] https://ww3.arb.ca.gov/regact/2019/ogvatberth2019/appc-1.pdf

with these Guidelines and unless ARB provides guidance otherwise, PMSA plans on advising its member companies accordingly.

Quarterly Credit Generation Timing and Annual Report

PMSA also observes that per Draft LCFS Guidance 20-03, the Annual Compliance Report due on April 30th of each year must include an itemized summary of electricity credit proceeds from the calendar year is to include, "3. Total number of credits generated during the calendar year. / 4. Total number of electricity credits generated during the calendar year." PMSA is seeking clarification on the definition of the time period described by the phrase "credits generated during the calendar year". CARB's online portal, the LRT-CBTS, indicates under its Ledger that credit/deficit generation occurs in the quarter in which credits are issued by CARB to the FRE account, and not in the quarter where the original energy transactions take place. For example, credits for energy transactions that took place in Quarter 3 2019 are recorded as Credits Generated for the date December 31, 2019. To maintain consistency with the LRT-CBTS' records, PMSA understands that this annual report should include credits generated from energy transactions that took place between Q4 of the previous year (booked as Credits Generated in the LRT-CBTS on March 31st of the reportable year) and Q3 of the reportable year (booked as Credits Generated in the LRT-CBTS on December 31st of the reportable year). However, the Draft LCFS Guidance 20-03 defines the period of coverage for the itemized summary that should be submitted by April 30th as "January 1, [year] to December 31, [year]."

PMSA requests CARB's clarification on whether the term "credits generated during the calendar year" refers to the period in which energy reports are submitted to and accepted by CARB, or the period in which the energy transaction occurs.

Allowable expenditures for hydrogen-powered electric vehicles

PMSA member companies have and will continue to invest in electric vehicles and equipment that are hydrogen powered. PMSA is seeking clarification as to whether references to "electric vehicles and/or equipment" and associate fueling infrastructure under Section 95491(d)(3)(A)(7) is inclusive of hydrogen-powered electric vehicles and/or equipment and hydrogen fueling infrastructure.

Conclusion

We would like to thank ARB staff for allowing us the opportunity to provide comments regarding the regulation and anticipated guidance documents. We look forward to CARB staff's response on the issues raised in this letter either in a direct response or outlined in the final guidance package. Please feel free to reach out to us by email (tjelenic@pmsaship.com) or phone (562-432-4043) if you have any questions.

Sincerely,

Thomas Jelenić

Thomas Jelenić
Vice President