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Re: Comments of SCE and PG&E Concerning the California Air Resources Board Draft Regulations on the California Low Carbon Fuel Standard

Introduction

The Low Carbon Fuel Standard (LCFS) is a statewide goal to reduce the carbon intensity of California's transportation fuels. The LCFS requires fuel providers in California to ensure that the mix of fuel they sell into the California market meets, on average, a declining standard for GHG emissions of 10 percent by 2020. The LCFS was first established by Executive Order S-01-07. As provided in this Executive Order, the LCFS applies to "all refiners, blenders, producers or importers ("Providers") of transportation fuels in California . . . .and may be met through market-based methods by which Providers exceeding the performance required by a LCFS shall receive credits that may be applied to future obligations or traded to Providers not meeting the LCFS."[1] The LCFS is intended to diversify California's transportation fuel supplies, decrease the greenhouse gases emitted from those fuels, and establish a sustainable market for cleaner

[1] Executive Order, paragraph 4.

burning fuels.[2] The Executive Order establishing the LCFS further directed the California Air Resources Board (CARB) to determine if an LCFS could be adopted as a discrete early action measure under AB 32, and to consider initiating a regulatory proceeding to establish and implement the LCFS.[3]

In accordance with this directive, CARB adopted the LCFS as a discrete early action measure pursuant to AB 32, and initiated proceedings to develop regulations concerning the LCFS. CARB released its first draft of LCFS regulations in October, and released an updated draft of those regulations this month. Southern California Edison (SCE) and Pacific Gas and Electric (PG&E) provide the following comments on CARB's December Draft LCFS Regulations.

For Electricity Used As A Transportation Fuel, LSEs Should Be The "Regulated Party" and Should Receive Any LCFS Credits Associated with Electricity Provided to Facilities Used to Charge Vehicles.

As provided above, the LCFS is intended to diversify California's transportation fuel supplies and facilitate a sustainable market for cleaner-burning fuels. As such, the LCFS is focused on regulating and incentivizing the ***fuel provider***, and should remain so, consistent with Executive Order S-01-07. In the case of electricity used as a transportation fuel, the fuel provider is the load serving entity (LSE), i.e. the electric utility selling electricity generally throughout its service area. Indeed, this is the model that was envisioned by the Office of the Governor in adopting Executive Order S-01-07. In describing how the LCFS will utilize market-based mechanisms to allow providers to choose how they reduce emissions, the Office of the Governor Whitepaper on the LCFS states:

> In order to realize these GHG reductions at the lowest cost and in the most consumer-responsive manner, the LCFS will utilize market-based mechanisms to allow providers to choose how they reduce emissions while

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[2] Office of Governor White Paper "The Role of a Low Carbon Fuel Standard in Reducing Greenhouse Gas Emissions and Protecting Our Economy" (1/8/07).

[3] Executive Order, paragraphs 4 and 5.

> responding to consumer demand. For example, providers may purchase and blend more low-carbon ethanol into gasoline products, ***purchase credits from electric utilities supplying low-carbon electrons to electric passenger vehicles***, diversify into low-carbon hydrogen as a product and more, including new strategies yet to be developed.[4]

A model which focuses on the fuel provider – and in the case of electricity as a transportation fuel, the LSE, as a fuel provider – makes sense because the LSE is in the best position to further the goals of the LCFS. For example, LSEs are best able to develop rate structures and programs that can incentivize electric transportation (ET). Under the supervision of the California Public Utilities Commission (CPUC) or the governing body of a publicly-owned utility, the LSEs do not profit on the sales of electric commodity to their customers, but instead pass through the value or benefits of any credits relating to those sales to their individual customers, including ET customers, in the form of reduced electricity rates, through the provision of additional infrastructure, or to offset higher costs resulting from increased ET programs and services.[5] These reduced rates, infrastructure, cost offsets, and other services will encourage and incentivize the use of electricity as a low-carbon transportation fuel, which is the goal of the LCFS.

LSEs, unlike private entities not generally engaged in providing electricity as a public utility service, are in a position to provide new ET related services, incentive rates and infrastructure on a broad non-discriminatory basis to all customers generally. Thus, LCFS credits are appropriately provided to LSEs not only because they are the regulated electricity fuel providers under the LCFS, but also because the credits will most efficiently offset the significant costs of these reduced rates and infrastructure that are additional to what the utilities would otherwise provide, and that are necessary to facilitate carbon reductions from the transportation sector. For example,

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[4] Office of Governor White Paper "The Role of a Low Carbon Fuel Standard in Reducing Greenhouse Gas Emissions and Protecting Our Economy" (1/8/07), p. 1.

[5] The entities regulating the LSEs (in the case of the IOUs, the CPUC, and in the case of municipal utilities, their boards), have the final decision over how the potential value of LCFS credits is distributed to utility ratepayers. The LSEs' expectation, however, is that because the LCFS credits are generated through the provision of electricity as a transportation fuel, the value of these credits will flow to the individual ET customer in the form of reduced rates or costs.

- In order to serve increased market penetration of electric vehicles, significant investments will be needed in electric infrastructure, both on the utility side of the meter (i.e. distribution and transmission upgrades) and on the customer side of the meter[6] (i.e. wiring and panel upgrades).
- The LCFS regulations themselves will require separate metering by LSEs of electric transportation load, so there will be additional cost for the development and implementation of new metering hardware and software.
- There will be costs for additional electrical energy generation and capacity needed to serve the new ET customers' loads. State requirements for renewable energy to serve new ET customers will require additional costs.
- There will be costs for mitigation of additional emissions from new ET customers, including GHG and criteria pollutants.
- There will be costs for load management equipment and services. Preliminary estimates by one utility indicate that plug-in vehicles in 2020 could add about 4,000 MW to the California electric grid if the utilities are not involved. The California utilities' experience in a wide array of load management services, including rate design, smart meters, smart grid communication systems, customer education and other utility programs will be key to addressing this increase in load in a manner that will benefit all ratepayers.
- The LCFS also will require additional costs for ET reporting and auditing, credit verification, credit banking and trading.
- There will be additional costs to integrate ET energy storage with the "Smart Grid" vision of using more renewable energy during off-peak

[6] As permitted or required by the CPUC.

periods; and the possibility of using that stored energy in ET vehicles, or in stationary applications of advanced automotive batteries, to return energy to the home (V2H) or to the grid (V2G) during peak load periods.

Although some third parties may seek to provide some of these services and infrastructure investments on a piecemeal, non-regulated basis, the great majority will be provided on a non-discriminatory, economic basis by LSE electric utilities. For this reason, LCFS credits are needed, and appropriately awarded to LSEs to offset these costs. If these costs are not offset with LCFS credits, then the rates paid by ET customers will have to cover these costs, thereby directly reducing the benefit (and incentive) to those customers willing to invest in ET and subsidizing the cost of reducing GHG emission more appropriately borne by the transportation sector. Using the credits on a general, non-discriminatory basis to reduce costs to customers who choose electric transportation is the best way to incentivize and build the market for low carbon electricity to be used as a transportation fuel.

CARB Should Confirm That LSEs are the "Regulated Party" to Whom LCFS Credits Flow.

The October draft LCFS regulations presented by CARB contained the following language concerning the LCFS as it pertains to electricity as a fuel:

> For electricity used as an on-road transportation fuel, the regulated parties are direct providers of electricity used as an on-road transportation fuel, including but not limited to, electricity Load Serving Entities (Investor Owned Utilities and Publicly Owned Utilities).[7]

The December draft LCFS regulations changed this language to state:

> For electricity used as a transportation fuel, the regulated party is the person that supplies electricity to the facility at which it is used to charge vehicles.[8]

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7 October 2008 LSCF Draft Regulation, p. 12.
8 December 2008 LCFS Draft Regulation, p. 17.

The language in either draft designates the LSE fuel provider as “Regulated Party.” However, in the October draft, LSEs are explicitly mentioned, while in the December draft, the service the LSEs provides is explicitly mentioned. Nevertheless, if the intent is to expand the definition of “regulated parties” to include sellers of ET-related services which are not direct sellers of electricity subject to regulation as such, then the definition is inherently infeasible, because it would potentially create thousands if not tens of thousands of small retail entities whose ET-related services would create massive double-counting of electricity fuel-related transactions to customers also directly served by LSEs. To avoid any ambiguity, massive accounting problems and confusion, the LSEs recommend that the Commission adopt the language previously contained in the October LCFS draft regulation.

CARB Should Reject Proposals Which Award LCFS Credits for Electricity Fuel to Third Party Non-LSEs Which Are Not Direct Electricity Providers and Which Are Not Subject to Regulatory Supervision by the CPUC or the Governing Bodies of Publicly Owned Utilities.

The LSEs understand that some unregulated third parties who are not direct sellers of electricity are seeking to obtain the LCFS credits that otherwise would accrue to electricity fuel providers to support those providers’ public utility programs and investments in support of ET customers. The LSEs do not oppose private entrepreneurs who are customers of the LSEs and who seek to develop new products and services to grow the ET market. Because such developers are our customers, we hope to work directly with them to structure rates and programs that will provide benefits to ET customers generally, under the supervision of the CPUC or governing bodies. However, the LSEs are opposed to modifying the fundamental structure of the LCFS as it applies to direct providers of electricity, solely for the purpose of providing a direct subsidy from our customers to those developers. Few details concerning the subsidies and set-asides proposed by third party non-LSEs have been provided; however, it is already clear that

these proposed subsidies to private developers are fundamentally in conflict with the public purposes and design of the LCFS. For example:

- Generally, only public utilities and other regulated entities can sell or re-sell electricity to retail customers. There is no indication that private developers of ET-related services intend to become public utilities and serve all ET customers on a non-discriminatory basis as part of their subsidized programs.
- No details have been provided concerning how these private developers will structure their consumer services in order to avoid duplicating or "double-counting" the electricity and other ET-related services that will be provide to the developer by the LSE utility. There are no agreements in place with the utilities, so it is unclear how ET customers will benefit from the subsidies proposed by the private developers. CARB should not lock itself in to a subsidy program which provides LCFS credits to third-party private developers on such a piecemeal, unregulated, undefined basis.
- The developers are private companies that are not regulated by the California Public Utilities Commission, the CEC, or municipal utility governing bodies. Under these circumstances, providing LCFS credits to such private companies could possibly constitute an illegal gift of public funds to a private entity. In contrast, the regulatory oversight already provided to regulated direct providers of electricity is worthwhile to ensure ET customer benefits.
- The LSEs understand that at least one third-party private developer has stated its present intent that it would "retire" LCFS credits rather than convert their value to private use and profit. Even if such a commitment could be legally enforced (which is doubtful), it does not return to customers the value of the credit, nor does it reduce the cost or incentivize

> the ET customer in any way. Worse, its only impact is to effectively reduce the cap on the amount of emissions available to fuel providers, which could be accomplished directly by reducing the cap itself. In contrast, if the LSE earns the credit through its own reduced emissions, the benefits are realized and passed on directly to the ET customer.

As provided above, the LCFS is – and should remain – focused on the entities which provide fuel and thus can effectuate the goals of the LCFS. The LCFS is but one vehicle to achieving carbon reductions in the transportation sector. There are other incentives, programs, and structures available to contribute to the development of the State's alternative fuel infrastructure. Indeed, as customers of the LSE, the third party developers themselves will directly benefit from the passthrough of the value of the LSEs' credits. If the private developers desire public subsidies, they should seek them through direct government funding and incentives, not through manipulating the LCFS credit market.

Conclusion

For the reasons described in these comments, the LSEs urge CARB to adopt language ensuring that the LSEs who directly provide electricity to their customers as a transportation fuel are the "regulated parties" under the LCFS regulations, and ensuring that the LSEs retain any LCFS credits for the benefit of their customers. This is the clear public purpose and intent of Executive Order S-01-07 and appropriately furthers the goals of the LCFS.