

**COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY TO THE  
CALIFORNIA AIR RESOURCES BOARD ON THE SECOND LCFS REGULATORY  
AMENDMENTS WORKSHOP HELD SEPTEMBER 14, 2011, AND THE PROPOSED  
REGULATION ORDER**

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## I.

### **INTRODUCTION**

Southern California Edison Company (“SCE”) respectfully submits its comments to the California Air Resources Board (“CARB”) on the Second Low Carbon Fuel Standard (“LCFS”) Regulatory Amendments Workshop, held September 14, 2011, and the Proposed Regulation Order, released September 14, 2011.<sup>1</sup> SCE thanks CARB staff for working with stakeholders to develop improved language for the LCFS regulation over the course of this rulemaking.

## II.

### **SCE SUPPORTS THE REGULATORY LANGUAGE ADDRESSING ELECTRICITY AS A REGULATED PARTY**

SCE generally supports the new regulation language affecting regulated parties for electricity.<sup>2</sup> In earlier workshops, CARB staff identified four principles that would shape the LCFS draft rules: (1) simplicity, (2) ensuring that all credits were claimed, (3) rewarding those that invest in transforming the electricity market, and (4) providing value back to the customer. SCE reiterates its proposal to add two additional principles for CARB’s consideration: (5) stability, and (6) fairness. CARB should provide participants with market stability and regulatory certainty to facilitate long-term business decision-making, and treat all regulated parties fairly and equally.<sup>3</sup> On the whole, however, the Proposed Regulation Order addresses these objectives in a balanced manner.

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<sup>1</sup> California Air Resources Board, Proposed Regulation Order, released September 14, 2011 (“September Proposed Regulation Order”), *available at* [http://www.arb.ca.gov/fuels/lcfs/regamend/091411lcfs\\_regamend\\_lang.pdf](http://www.arb.ca.gov/fuels/lcfs/regamend/091411lcfs_regamend_lang.pdf).

<sup>2</sup> See Proposed Regulation Order at 39-41.

<sup>3</sup> See Comments of Southern California Edison Company to the California Air Resources Board on the LCFS Draft Regulation Language and the First Low Carbon Fuel Standard Regulatory Amendments Workshop (“SCE August 5 Comments”), August 5, 2011, at 6.

**A. Residential Charging**

Section 95484(a)(6)(A) provides that for charging of electric vehicles (“EVs”) in a single or multi-family home, the Electrical Distribution Utility is the regulated party, provided that it provide EV time-of-use pricing as a rate option, actively educate the public on the benefits of EV transportation, and report on its efforts to CARB.<sup>4</sup> SCE supports this provision. SCE’s belief that education and outreach is crucial to supporting the developing market for EVs in California is evidenced by its comprehensive PEV Readiness Program. This includes customer and stakeholder awareness efforts through its PEV microsite,<sup>5</sup> auto shows and other events, social media, user-generated media, and through general and on-line media channels. In addition, SCE has actively engaged automotive dealers by participating in dealer training, introductory training packages, notification efforts,<sup>6</sup> and ongoing sales support.

**B. Public Access EV Charging**

For transportation fuel supplied through public access EV charging equipment, Section 95484(a)(6)(B) designates as the regulated party either the third-party non-utility Electric Vehicle Service Provider (“EVSP”) or the Electrical Distribution Utility, so long as that party has installed the equipment and has a contract with “the property owner or leasor” to maintain or otherwise service the charging equipment.<sup>7</sup> If the EVSP elects not to be a regulated party, then the rule provides that the Electrical Distribution Company is eligible to be the backup generator.

SCE requests clarification regarding the terms “Electrical Distribution Utility” and “Electrical Distribution Company,” both of which are used in this rule. In Section 95484(a)(6)(A), CARB defines “Electrical Distribution Utility” consistent with the

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<sup>4</sup> Proposed Regulation Order § 95484(a)(6)(A), at 39.

<sup>5</sup> See <http://www.sce.com/pev>.

<sup>6</sup> SCE is working with cities, automakers, dealers, and installers of electric vehicle supply equipment to encourage customers to notify the utility of its EV efforts. In this way, SCE can provide customers with rate options, conduct an infrastructure check, and maintain reliability.

<sup>7</sup> Proposed Regulation Order § 95484(a)(6)(B), at 39-40.

definition in the cap-and-trade regulation. SCE supports the use of this definition and recommends that the term be standardized throughout the rule to maintain consistency.<sup>8</sup> Alternatively, SCE requests that CARB provide a definition of Electrical Distribution Company so parties can understand the differences between the two.

SCE requests clarification regarding the use of the term “lessor” in Section 95484(a)(6)(B). SCE believes the term “lessor” should be changed to “lessee,” as the lessor is presumably the property (land) owner, but not necessarily the party operating or maintaining the charging equipment. Additionally, CARB should consider including contracts with the agents of the property owner or lessee, such as property management companies, within the scope of 95484(a)(6)(B).

To increase clarity, SCE proposes the following modifications:

Section 95484(a)(6)(B)

For transportation fuel supplied through public access EV charging equipment, the third-party non-utility Electric Vehicle Service Provider (ESVP) or Electrical Distribution Utility that has installed the equipment, or had an agent install the equipment, and who has a contract with the property owner or ~~lessor~~ lessee or the respective agent thereof where the equipment is located to maintain or otherwise service the charging equipment is eligible to opt-in as a regulated party.

SCE also supports the language providing an alternate regulated party for public access charging in order to prevent the credits from going unclaimed, but recommends the provisions for a contract with the third-party, non-utility EVSP be deleted.<sup>9</sup>

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<sup>8</sup> SCE suggests utilizing the definition of “Electrical Distribution Utility” as used in the CARB cap-and-trade regulation, § 95481. CARB should add the following language to the Proposed Regulation Order: “Electrical Distribution Utility” means an entity that owns and/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 2) a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3, or 3) an Electrical Cooperative (COOP) as defined in Public Utilities Code section 2776, which provides electricity to retail end users in California.

<sup>9</sup> See Appendix A.

### **C. Fleet Charging**

Section 95484(a)(6)(C) states that fleet operators are eligible to be regulated parties for transportation fuel supplied to a fleet of three or more EVs.<sup>10</sup> If the fleet operator elects not to be a regulated party, then the Electrical Distribution Company is eligible to serve as the alternate regulated party provided it has a contract with the fleet operator.<sup>11</sup> For fleets of less than three EVs, then the Electrical Distribution Company is eligible to be the regulated party.<sup>12</sup>

SCE also supports the language providing an alternate regulated party for fleet charging, but recommends deleting the provision requiring a contract with the fleet operator.<sup>13</sup> It is possible that many fleet operators will choose not to opt into the LCFS program; providing for an alternate will prevent credits from going unclaimed.

SCE requests that CARB confirm that non-road EVs, heavy-duty EVs, and electric rail are considered fleets and governed by Section 95484(a)(6)(C). At the September 14 Workshop, CARB staff indicated that existing electric transit is eligible to participate in the LCFS program, which implies that other existing EV equipment such as non-road EVs are also eligible. SCE supports including existing electric transit and non-road equipment in the LCFS program as regulated parties.

### **D. Workplace Charging**

Section 95484(a)(6)(D) allows business owners to be the regulated party for workplace charging, but designates the Electrical Distribution Company as an alternate regulated party provided the Electrical Distribution Company enters into a contract with the business owners.<sup>14</sup> SCE has previously advocated for Electrical Distribution Utilities to be the regulated party because they can provide administrative simplicity for CARB and utility regulators, as well as

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<sup>10</sup> Proposed Regulation Order § 95484(a)(6)(C), at 40.

<sup>11</sup> Proposed Regulation Order § 95484(a)(6)(C), at 40.

<sup>12</sup> Proposed Regulation Order § 95484(a)(6)(C), at 40.

<sup>13</sup> See Appendix A.

<sup>14</sup> Proposed Regulation Order § 95484(a)(6)(D), at 40.

the ability to return value to the customers. Still, SCE supports the language designating the Electrical Distribution Company as the alternate regulated party if the business owner elects not to participate in the LCFS program. SCE also recommends deleting the provision requiring a contract with the fleet operator.<sup>15</sup>

To maintain consistency with the reporting requirements, a parallel reporting requirement for workplace charging should be added in Section 95484(c)(3)(C), for workplace charging facilities to report the amount of electricity dispensed in kilowatt-hours.

### **III.**

#### **CARB SHOULD CREATE CLEAR RULES FOR ALTERNATE REGULATED PARTIES**

Consistent with the principle of ensuring that no credits go unclaimed, the Proposed Regulation Order provides for the Electrical Distribution Company to opt in as the regulated party if the original designee elects not to participate. SCE strongly supports this provision, as noted above.

However, the Proposed Regulation Order does not provide a clear program or rules for alternate regulated parties. For example, there is no process for notifying the alternate regulated party that the original designee has opted out of the LCFS program or has never opted into the program. In addition, if a regulated party goes out of business, such a notification program for alternate regulated parties should be in place. At the Second LCFS Regulatory Amendments Workshop, CARB staff indicated that the opt-in and opt-out provisions in Section 95480.3 did not cover this instance.<sup>16</sup> SCE requests that CARB explore the creation of a clear notification process so that alternate regulated parties can claim LCFS credits in a timely manner. Although Electrical Distribution Utilities have some means to identify these parties through their own records, as the regulator, CARB will have the most complete and accurate methods for

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<sup>15</sup> See Appendix A.

<sup>16</sup> Proposed Regulation Order § 95480.3, at 6-8.

identifying these opportunities. In addition, it is unclear what the timeline is for regulated parties and alternate regulated parties to opt in and out of the LCFS program, and whether there are any deadlines for participation. CARB should consider the following questions when designing rules for alternate regulated parties:

- Will alternate regulated parties be formally notified by CARB that the original regulated party has not opted in, opted out, or does not meet the conditions placed on the primary regulated party?
- When will an alternate regulated party be allowed to begin generating credits?
- Will credits be available retroactively for alternate regulated parties?
- Can the original regulated party become the regulated party again once the alternate regulated party has opted in?

Moreover, the rules requiring the alternate regulated party to have a contract with the original regulated party are problematic. There are many possible situations where an original regulated party will no longer generate LCFS credits. For example, the regulated party could go out of business, fail to comply with CARB's regulations, or simply choose not to opt in to the program. In these cases, that original regulated party is unlikely to enter into agreements with an alternate regulated party for LCFS credits.

SCE supports the revised language for alternate regulated parties offered by the California Electric Transportation Coalition ("CalETC") in their comments on this topic, also filed October 5, 2011. The revised language, attached as Appendix A, makes the following changes:

- The alternate regulated party's participation is clearly optional or voluntary, just as the original regulated party's participation is optional or voluntary.
- Because of the potential for situations where the original eligible regulated party never opts in or goes out of business, the language requiring an alternate regulated party to enter into a contract with the primary regulated party is deleted.

- For fleet charging and workplace charging, the suggested language follows the same symmetry of construct as the language for public-access charging.

#### IV.

### **SCE REQUESTS THAT THE ENERGY ECONOMY RATIO (“EER”) BE INCREASED TO 3.39 AND RECOMMENDS AN UPDATE EVERY THREE YEARS BASED ON A FAIR AND TRANSPARENT METHODOLOGY**

In Section 95485, Table 5, CARB proposes to lower the EER from 3.0 to 2.6.<sup>17</sup> This effectively lowers the amount of carbon a plug-in electric vehicle (“PEV”) is given credit for reducing by more than ten percent. The EER is a dimensionless comparison of a PEV running on electricity with a conventional vehicle running on gasoline or diesel. At the workshops, CARB staff explained in their presentation<sup>18</sup> that they calculated an *increase* in the EER to 3.39 (from 3.0) based on a 2011 plug-in EV such as the Chevrolet Volt or Nissan Leaf compared to their 2011 gasoline counterparts. However, staff lowered the EER to 2.6 (from 3.39) only because of an assumed thirty percent improvement by 2016 gasoline vehicle miles per gallon efficiency. SCE disagrees with lowering the EER to 2.6, and recommends that it be revisited and revised.

As a U.S. Department of Energy field testing site for PEVs, SCE has nearly twenty years of experience in side-by-side testing of electric vehicles and their gasoline counterparts, and understands the complexity of calculating carbon intensity. Because the LCFS market is still nascent, an EER of 3.39 is acceptable for the first few years of the PEV market. An EER of 3.39 is based on staff analysis and an “apples-to-apples” comparison of the fuel economy of the Nissan Leaf and Chevrolet Volt compared to their 2011 gasoline counterparts. By contrast, comparing today’s plug-in EVs to future, more efficient gasoline vehicles is an inappropriate

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<sup>17</sup> Proposed Regulation Order § 95485, Table 5, at 59.

<sup>18</sup> California Air Resources Board, “Low Carbon Fuel Standard Proposed Amendments,” July 22 2011, at 49-50, available at [http://www.arb.ca.gov/fuels/lcfs/regamend/072211lcfs\\_regamend\\_pres.pdf](http://www.arb.ca.gov/fuels/lcfs/regamend/072211lcfs_regamend_pres.pdf).



comparison and would undercalculate the actual carbon reduction achieved. SCE recommends that CARB keep the EER at 3.39, and develop a reasoned methodology for updating the EER every three years, to allow for updates in efficiency comparisons between technologies of the same model year. In addition, the new data and methodology should be clear and transparent to all stakeholders. SCE looks forward to assisting staff in any way possible to develop a workable, simple, fair, transparent, and robust methodology for the EER update calculation.

## V.

### **SCE SEEKS CLARIFICATION ON THE RULES GOVERNING THE TRANSFER OF LCFS CREDITS**

Section 95488(b) sets out rules for the transfer of LCFS credits.<sup>19</sup> Section 95488(b)(3) allows parties to use a credit facilitator for the seller, the buyer, or both.<sup>20</sup> These credit facilitators can be brokers or credit transfer service agencies.<sup>21</sup> SCE seeks that CARB clarify that the facilitator is not obligated to disclose the name of the credit seller to the credit buyer, and vice versa. The regulation language does not explicitly state whether the facilitator may choose not to reveal the identities of both parties in the transaction, as is common practice in other markets. For example, brokers in the stock markets, wholesale electricity markets, and the upcoming cap-and-trade allowance markets do and will operate under this principle. SCE supports this practice, as it makes the market more efficient, avoids the risk of large numbers of unsold credits, but does not impede the release of other market information.

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<sup>19</sup> Proposed Regulation Order, § 95488(b), at 91-93.

<sup>20</sup> Proposed Regulation Order, § 95488(b)(3), at 93.

<sup>21</sup> *Id.*

## VI.

### **SCE RECOMMENDS ADDITIONS TO THE DISPUTE RESOLUTION LANGUAGE TO INCLUDE THE ELECTRICITY SECTOR**

SCE supports the newly-added Section 95480.4, which establishes dispute resolution language for situations when multiple parties claim to be the regulated party for the same volume of fuel.<sup>22</sup> By effectively preventing credit sharing and by designating a primary regulated party and an alternate regulated party, CARB has added clarity to the rule, which will serve to prevent many disputes before they arise.

However, it is not clear from the regulation language, or from the September 14 workshop, whether the dispute resolution process was designed with the electricity sector in mind, particularly in the case of a dispute between a primary regulated party or an alternate regulated party. SCE urges CARB to revise this section to address this situation. SCE recommends that the rules be revised such that an arbitrator (rather than the Executive Officer) should first examine the rule language, guidance documents, advisories, and other CARB published materials, before reviewing any contracts between the parties in order to resolve such disputes.

SCE supports the CalETC dispute resolution language recommendations. Specifically, SCE suggests that the opening paragraph be revised as follows:

Under the LCFS regulation, there can only be one regulated party for a specific volume of fuel at any given time. ~~In the event that more than one person has inadvertently registered with ARB as the regulated party for the same volume of fuel, the following provisions shall apply:~~ If more than one party has registered with ARB as the regulated party for the same volume of fuel, and this claim for LCFS credit ownership (i.e., claim to be the regulated party) is consistent with the LCFS regulatory text and any ARB guidance documents, advisories, or similar materials published by ARB (and therefore eligible to be the regulated party), then the following provisions shall apply:

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<sup>22</sup> Proposed Regulation Order, § 95480.4, at 9.

In addition, SCE suggests that subsections (c)(1) and (c)(2) be reversed and revised to read as follows:

(1) The claim to be a regulated party must first be reviewed for consistency with the LCFS regulatory text and any ARB guidance documents, advisories, or similar materials published by ARB.

(2) If under (1) there remains a dispute, the regulated party to which the credits are obligated pursuant to an enforceable written contract between the parties involved.

In the event that there may be other language changes recommended to address the issues unique to other alternative fuels, specifically for the case of electricity SCE suggests (c)(3) be amended:

(3) If the appropriate regulated party cannot be determined under ~~either (1) or (2)~~, the Executive Officer shall release the credits to the Electrical Distribution Utility, at issue to the regulated party that was first to report in the LRT the volume of fuel from which the credits were generated.

## VII.

### **SCE RECOMMENDS THAT CARB CLARIFY ITS DEFINITION OF DIRECT METERING**

SCE recommends that CARB revise and clarify Section 95484(c)(3)(C), which addresses specific quarterly reporting requirements for electricity.<sup>23</sup> The use of the phrase “submetering” to stand in for “direct metering” is technically incorrect, as direct measurement of kWh to the plug-in vehicle can be done by either a submeter or a separate meter. At a minimum, SCE suggests that CARB make the following changes:

(a) the use of direct metering (~~also called submetering~~ either submetering or separate metering) to measure the electricity directly dispensed to all vehicles at each residential charging station;

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<sup>23</sup> Proposed Regulation Order, § 95484(c)(3)(C), at 47-48.

**VIII.**

**CONCLUSION**

SCE thanks CARB for the opportunity to comment on the Proposed Regulation Order and urges CARB to revise the regulation in accordance with these comments.

Respectfully submitted,

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## **Appendix A**

### **CalETC Proposed Redline Language**

## Section 95484 (a)(6). Requirements for Regulated Parties for Electricity

(6) *Regulated Parties for Electricity.* For electricity used as a transportation fuel, the party who is eligible to opt-in as a regulated party is determined as specified below:

- (A) For transportation fuel supplied through electric vehicle (EV) charging equipment ~~in on the premises of a single or multi- families residence-family home, the~~ Electrical Distribution Utility ~~(an Investor Owned Utility (IOU) as defined in Public Utilities Code sections 216 and 218 or a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3 which provide electricity to a retail end user in California)~~ is eligible to opt-in as the regulated party in their defined utility territory. To receive credit for electricity supplied as a transportation fuel, the Electrical Distribution Utility must:
1. provide EV time-of-use pricing as a rate option that includes a reduced price discount for off-peak charging.
  2. actively educate the public on the benefits of EV transportation (including environmental benefits and costs of EV charging as compared to gasoline) through outreach efforts that may include, but are not limited to, the following:
    - a. public meetings
    - b. EV dealership flyers
    - c. utility customer bill inserts
    - d. radio and/or television advertisements
    - e. webpage content
  3. include in annual reporting a summary of efforts to meet requirements 1 and 2, as well as an accounting of the number of EVs known to be operating in the service territory.
- (B) For transportation fuel supplied through public access EV charging equipment, the third-party non-utility Electric Vehicle Service Provider (EVSP) or Electrical Distribution Utility that has installed the equipment, or had an agent install the equipment, and who has a contract with the property owner or lessor where the equipment is located to maintain or otherwise service the charging equipment is eligible to opt-in as the regulated party. If the EVSP elects is not to become a the regulated party for a specific volume of fuel, or has not otherwise fully complied with the requirements of this subarticle, the Electrical Distribution Utility Company is eligible to opt in as be the regulated party. Provided there a contract or other written evidence of mutual agreement that the EVSP has elected not to be the regulated party and is allowing the Electric Distribution Company to be the regulated party. To receive credit for transportation fuel supplied through public access EV charging equipment, the regulated party must:

1. provide EV time-of-use pricing as a rate option that includes a discount for off-peak charging,
  2. actively educate the public on the benefits of EV transportation (including environmental benefits and costs of EV charging as compared to gasoline) through outreach efforts that may include, but are not limited to, the following:
    - a. public meetings
    - b. EV dealership flyers
    - c. utility customer bill inserts
    - d. radio and/or television advertisements
    - e. webpage content
  3. include in annual reporting a summary of efforts to meet requirements 1 and 2, as well as an accounting of the number of operating EV charging stations and the number of charging incidents.
- (C) For transportation fuel supplied to a fleet of three or more EVs, a ~~person~~ company operating a fleet (fleet operator) is eligible to be a regulated party. If the fleet operator is not the elects not to be a regulated party for a specific volume of fuel, or has not otherwise fully complied with the requirements of this subarticle, the Electrical Distribution ~~Utility Company~~ is eligible to opt in as be the regulated party. ~~Provided there a contract or other written evidence of mutual agreement that the EVSP has elected not to be the regulated party and is allowing the Electric Distribution Company to be the regulated party.~~ For transportation fuel supplied to a fleet of less than three EVs, the Electrical Distribution ~~Utility Company~~ is eligible to be the regulated party. To receive credit for transportation fuel supplied to an EV fleet, the regulated party must include in annual reporting an accounting of the number of EVs in the fleet.
- (D) For transportation fuel supplied through private access EV charging equipment at a business or workplace, the business owner is eligible to be a regulated party. If the business owner elects is not to be a the regulated party for a specific volume of fuel, or has not fully complied with the requirements of this subarticle, the Electrical Distribution ~~Utility Company~~ is eligible to opt in as be the regulated party. ~~Provided there a contract or other written evidence of mutual agreement that the EVSP has elected not to be the regulated party and is allowing the Electric Distribution Company to be the regulated party.~~ To receive credit for transportation fuel supplied through private access EV charging equipment at a business or workplace, the regulated party must:
1. actively educate employees on the benefits of EV transportation (including environmental benefits and costs of EV charging as compared to gasoline) through outreach efforts that may include, but are not limited to, the following:

- a. employee meetings
- b. public meetings
- c. EV dealership flyers
- d. employee flyers
- e. webpage content
- f. preferred parking, if feasible

- 2. Include in annual reporting a summary of efforts to meet requirement 1, as well as an accounting of the number of EVs known to be charging at the business.

(E) In the event that criteria for regulated party designations in subparagraphs (B), (C), and (D) above are not met, or there is measured electricity as a transportation fuel that is not covered in paragraphs (B) through (D) above, the Electrical Distribution Utility is eligible to opt in as the regulated party. Notwithstanding the other requirements of Section 95484 (a)(6), to receive credits, the Electrical Distribution Utility must:

- 1. provide EV time-of-use pricing as a rate option that includes a discount for off-peak charging.
- 2. actively educate the public on the benefits of EV transportation (including environmental benefits and costs of EV charging as compared to gasoline) through outreach efforts that may include, but are not limited to, the following:
  - a. public meetings
  - b. EV dealership flyers
  - c. utility customer bill inserts
  - d. radio and/or television advertisements
  - e. webpage content
- 3. include in annual reporting a summary of efforts to meet requirements 1 and 2, as well as an accounting of the number of EVs known to be operating in the service territory.