

**COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY TO THE  
CALIFORNIA AIR RESOURCES BOARD ON THE THIRD LOW CARBON FUEL  
STANDARD REGULATORY WORKSHOP, OCTOBER 14, 2011, AND THE  
PROPOSED REGULATION AMENDMENTS**

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**I.**

**INTRODUCTION**

Southern California Edison Company (“SCE”) respectfully submits its comments to the California Air Resources Board (“CARB”) on the Third Low Carbon Fuel Standard (“LCFS”) Regulatory Workshop, held on October 14, 2011, and the LCFS Proposed 2011 Regulatory Amendments (“Proposed Regulation Order”), released October 13, 2011.<sup>1</sup> SCE applauds the many efforts from CARB staff in working to address the concerns of stakeholders to develop the LCFS regulation. Since the workshop, CARB staff has also provided SCE and other stakeholders with an informal update of the proposed language presented at the workshop.

**II.**

**SCE COMMENDS CARB ON ITS IMPROVEMENTS TO THE REGULATION FOR  
REGULATED PARTIES FOR ELECTRICITY**

SCE commends CARB staff for many of its revisions to Section 95484(a)(6), which governs regulated parties for electricity,<sup>2</sup> and thanks CARB staff for its willingness to revise the regulation in response to stakeholder concerns. In particular, SCE applauds the inclusion of

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<sup>1</sup> Proposed Regulation Order, released October 13, 2011, *available at* <http://www.arb.ca.gov/fuels/lcfs/regamend/101411regorder.pdf>

<sup>2</sup> Proposed Regulation Order, § 95484(a)(6), at 36-39.

Section 95484(a)(6)(E), which provides that an Electrical Distribution Utility (“EDU”) is eligible to opt in as the regulated party in the event there is measured electricity as a transportation fuel not covered in the other sections of the regulation.<sup>3</sup> Allowing for an alternate regulated party will serve to ensure that credits do not go unclaimed, and will encourage the continued electrification of transportation. In addition, SCE supports the changes in Sections 95484(a)(6)(B)-(D), allowing an EDU to opt in as an alternate regulated party with the Executive Officer’s (“EO”) approval, rather than requiring an EDU to execute a contract with the party originally designated as the eligible regulated party. In many cases, an original regulated party choosing not to participate in the LCFS program may not be able to enter into a contract. This change will ensure greater ease of administration and simplicity for all participants in the LCFS program.

### III.

#### **SCE SUPPORTS EDUCATION AND OUTREACH EFFORTS FOR EV CUSTOMERS BUT HAS CONCERNS WITH THE NEW REQUIREMENTS IN SECTION 95484(a)(6)(A)**

In Section 95484(a)(6)(A)(1) of the Proposed Regulation Order, CARB has added language requiring EDUs to use all credit proceeds as direct benefits for current EV customers. SCE is committed to petitioning the California Public Utilities Commission (“CPUC”) to allow LCFS credit proceeds to flow to EV customers and for education and outreach in accordance with the principles outlined by staff.<sup>4</sup> SCE supports the language provided in the informal staff update for Section 95484(a)(6)(A)(1), requiring regulated parties to:

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<sup>3</sup> Proposed Regulation Order, § 95484(a)(6), at 39.

<sup>4</sup> 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, August 5, 2011, at 5-6, *available at* [http://www.arb.ca.gov/lists/lcfs-regamend-ws/10-sce\\_comments\\_on\\_lcfs\\_draft\\_regulation\\_08-05-11.pdf](http://www.arb.ca.gov/lists/lcfs-regamend-ws/10-sce_comments_on_lcfs_draft_regulation_08-05-11.pdf).

use all credit proceeds as direct benefits for current EV customers. The regulated party may, in lieu of this requirement, use some portion of proceeds to enhance public EV education as described below.<sup>5</sup>

However, SCE has concerns with some of the new language added to the regulation in the most recent set of amendments. For example, the Proposed Regulation Order now states: “The use of any LCFS proceeds to fund such [education and outreach] efforts shall not be used to replace other sources of funding for similar efforts.”<sup>6</sup> In addition, the required compliance reporting “must demonstrate that LCFS proceeds were used to fund efforts that would not otherwise have occurred.”<sup>7</sup> SCE understands the desire for additionality. SCE has long been a leader in education and outreach efforts on the benefits of electric transportation to both current and prospective EV customers; however, SCE should not be penalized for its early efforts in this arena. Including these provisions could lead to previously-unforeseen difficulties with administration and enforcement of this provision. For example, how would CARB determine the baseline level and baseline dates for the required public EV education efforts? How would a regulated entity show in its report that these efforts would not have otherwise occurred? SCE is committed to developing a solution with CARB staff that satisfies CARB’s principle that credits should be used to provide an additional benefit in the attractiveness of PEVs in the market, and looks forward to working with staff on this issue in the future.

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<sup>5</sup> Informal update language presented by CARB to CalETC as possible language for the Proposed Regulation Order.

<sup>6</sup> Proposed Regulation Order, § 95484(a)(6)(A)(3), at 37.

<sup>7</sup> Proposed Regulation Order, § 95484(a)(6)(A)(4), at 37.

#### IV.

### **CARB SHOULD CREATE A SEPARATE CATEGORY FOR NON-ROAD ELECTRIC VEHICLES, ELECTRIC TRAINS, ELECTRIC TRANSIT, AND PORT ELECTRIFICATION**

SCE continues to support the inclusion of all types of transportation electrification in the LCFS regulation, beyond light-duty on-road vehicles.<sup>8</sup> Electric transportation covers a broad scope, and can also include new and existing electric trains, electric transit, port electrification, and many types of non-road electric equipment, such as forklifts, mining equipment, and baggage tugs. These are within the scope of the adopted LCFS program.

SCE agrees with CARB staff that this topic deserves more thoughtful consideration as part of a new 2012 LCFS rulemaking. SCE respectfully requests that CARB add language directing staff to address the topic of non-road EVs as part of its December 15 Board Resolution. In addition, the Board Resolution should direct CARB staff to amend Section 95484(a)(6) to add a new subsection designating the regulated party for electric transportation outside of light-duty on-road vehicles.

#### V.

### **CARB SHOULD CONTINUE TO CLARIFY THE PROCESS FOR GENERATING LCFS CREDITS**

It is crucial for CARB to create a transparent and reasonable process for generating LCFS credits so regulated parties can knowingly comply with the regulation. In previous comments, SCE requested additional clarification of and further details on rules for primary and alternate

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<sup>8</sup> 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, October 5, 2011, at 4, *available at* [http://www.arb.ca.gov/lists/lcfs-regamend-ws/39-sce\\_comments\\_to\\_carb\\_on\\_lcfs\\_regulation\\_amendments\\_october\\_2011.pdf](http://www.arb.ca.gov/lists/lcfs-regamend-ws/39-sce_comments_to_carb_on_lcfs_regulation_amendments_october_2011.pdf); Comments of Southern California Edison Company to the California Air Resources Board's Public Workshop to Discuss Proposed Changes to the Low Carbon Fuel Standard Regulation, August 28, 2009, at 5-9.

regulated parties.<sup>2</sup> SCE reiterates this request, and also asks that CARB engage stakeholders in additional discussion on the verification process for primary regulated parties. At the Third LCFS Regulatory Amendments Workshop, CARB staff stated that new reporting forms will be developed. CARB should clarify whether the reporting process will be included in the regulatory language before the Board, or whether it will be part of guidance language or advisory language separately released by CARB.

## VI.

### **CARB SHOULD REVISE THE DISPUTE RESOLUTION PROVISIONS TO ACCOUNT FOR ELECTRICITY AS A TRANSPORTATION FUEL**

At the Third LCFS Regulatory Amendments Workshop, CARB staff stated that the dispute resolution provisions in Section 95480.4<sup>10</sup> do not apply to the electric sector. However, this interpretation appears contrary to a plain reading of Section 95480.4, given that electricity is “transportation fuel.” SCE recommends that CARB revise the language to make clear that the dispute resolution provisions do not apply to the electric sector. At the workshop, CARB staff stated that CARB intended to make the language as clear as possible in order to avoid any disputes over credit generators in the electric sector. SCE supports this goal, and believes that the revisions to the new Proposed Regulation Order will serve to minimize disputes.

#### **1. Disputes Over the Regulated Party Should First Be Consistent With the LCFS Regulatory Text**

Although the regulation language has been improved, it is still possible for disputes to arise in the electricity sector as well as in other transportation sectors, either between different parties that both claim to be the primary credit generator, or between the primary and the

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<sup>2</sup> See 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, October 5, 2011, at 5-6, for a detailed list of SCE’s questions.

<sup>10</sup> Proposed Regulation Order, § 95480.4, at 9.

alternate regulated party. Accordingly, SCE offers the following suggested redlines to the Proposed Regulation Order:

95480.4 Multiple Parties Claiming to Be the Regulated Party for the Same Volume of Fuel

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 is therefore eligible to be the regulated party), then the following provisions shall apply:~~

**2. CARB Should Clarify the Definition of “Importer” to Exclude Electricity Importers**

In Section 95480.4(c) of the Proposed Regulation Order, CARB provides an order of priority for releasing disputed credits. Sections 95480.4(c)(1) and 95480.4(c)(2) do not apply to electricity as a transportation fuel. Section 95480.4(c)(3), which gives the credit to “the importer,” could however cause confusion, and should be revised to exclude electricity. At the Third LCFS Regulatory Workshop, CARB staff noted that the new definition of “importer” in Section 95481(a)(31) inadvertently includes electricity, because electricity is a transportation fuel.<sup>11</sup> CARB staff indicated that it was their intent to have this definition only apply to liquid fuels. SCE requests that CARB clarify the rule by specifically excluding electricity from the definition of importer, and to revise Section 95480.4(c)(3) to also exclude electricity, as follows:

Section 95480.4(c)

(3) The importer (excluding importers of electricity), if neither (1) nor (2) applies; if this provision does not apply, then

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<sup>11</sup> Proposed Regulation Order, § 95481(a)(31), at 15.

These revisions should clarify that importers of electricity are not covered as regulated parties within the LCFS regulation unless they qualify under one of the provisions of Section 95484(a)(6) specifically addressing electricity as a regulated party.

**3. Clear Definitions for the Electricity Charging Categories Will Limit Confusion in Mixed-Use Charging Circumstances**

To further minimize disputes, SCE recommends that CARB develop clear definitions for single and multi-family residences, fleets, workplaces, and public-access charging stations. Confusion could occur when mixed-use charging occurs. For example, disputes could arise involving EV charging at home-based businesses, visitor charging lots at multi-family residences or businesses, or employee or visitor charging during business hours at businesses with EV fleets. SCE recommends that CARB consider the following ideas when developing its specific definition language:

- “Electric Vehicles” or “EVs” should not be limited to pure battery electric vehicles, but should include other plug-in vehicles.
- “Public-access EV charging” should mean allowing 100% access for all EVs during business hours, and may include visitor lots at workplaces and multi-family residences if they meet this requirement.
- “Single- or multi-family residences” should mean dwellings where individuals live, as well as home-based businesses at these locations. Visitor EV charging that does not meet the definition of public-access EV charging should remain in the residential charging category.
- “A fleet of three or more EVs” should mean a fleet with vehicles used by businesses for a business purpose, and may include limited-access charging by visitors or employees of the fleet EV charging equipment.
- “Private-access EV charging equipment at a business or workplace” should mean EV charging by employees in dedicated employee parking lots, and visitor EV charging that does not meet the definition of public-access EV charging.

## VII.

### **COMMUNITY CHOICE AGGREGATORS SHOULD NOT BE INCLUDED IN THE DEFINITION OF ELECTRICAL DISTRIBUTION UTILITY**

SCE supports the new definition of EDU added to the Proposed Regulation Order, in Section 95481(a)(22).<sup>12</sup> However, at the Third LCFS Regulatory Workshop, CARB staff stated that they intended to add community choice aggregators (“CCAs”) to the definition of EDU. This addition was included in the informal update language provided to stakeholders.<sup>13</sup> This is a mistake. By including CCAs, CARB is slipping back to earlier proposed regulation language which used the term “load-serving entity” (“LSE”), which SCE had earlier opposed. Using the term EDU (rather than LSE) allows CARB to properly reimburse those entities that made significant distribution and other utility system upgrades to manage the adoption of PEVs.<sup>14</sup> CCAs are not EDUs because they do not own distribution systems and do not have the responsibility for distribution service. CCAs are authorized under California law to operate within the service areas of the investor-owned electric utilities to provide electricity procurement service to customers within their jurisdictions. However, the investor-owned electric utilities continue to provide the transmission and distribution of that electricity, as well as metering, billing, collection and customer service to retail customers that participate in community choice aggregation.<sup>15</sup> CCAs are not local publicly-owned electric utilities (“POUs”) as defined in

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<sup>12</sup> Proposed Regulation Order, § 95481(a)(22), at 13 (“‘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>13</sup> The update language would have added the following sentence: “For the purposes of this regulation, Community Choice Aggregators (as defined in the Public Utilities Code section 366.2) are included.”

<sup>14</sup> See Comments of Southern California Edison Company on the Low Carbon Fuel Standard Electricity Workgroup Meeting, August 10, 2010, at 2.

<sup>15</sup> See e.g., P.U. Code Sections 366.2(c)(1), (c)(9); also SCE Tariff Rule 23, Section B.2.d, providing “Transmission and Distribution Service. Subject to the terms and conditions of the CCA Service Agreement (Form 14-768), applicable SCE tariffs, applicable FERC rules and CCAs and customer’s compliance with their terms and conditions, SCE shall provide transmission and distribution services under applicable tariffs and contracts for delivery of electric power to CCA customers.” CCAs are not authorized to operate in the service areas of local publicly owned utilities.

Public Utilities Code section 224.3 and are not authorized to serve customers of POU's.<sup>16</sup>  
Accordingly, SCE strongly urges CARB not to include CCAs in the definition of EDU.

**VIII.**

**CONCLUSION**

SCE thanks CARB for the opportunity to comment on the Third LCFS Regulatory Workshop and the current amendments to the Proposed Regulation Order and urges CARB to modify the rule in accordance with the principles outlined herein.

Respectfully submitted,

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<sup>16</sup> See P.U. Code Section 366.2(c)(1), providing "the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility."