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James S. Kenan
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Chief Executive Officer

April 22, 2009

Chairman Mary Nichols
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Dear Chairman Nichols:

The Orange County Transportation Authority (OCTA) appreciates the opportunity to comment on the proposed regulation to implement the low carbon fuel standard (LCFS). While OCTA appreciates the efforts the California Air Resources Board (CARB) has taken to create such an expansive, significant rule in a short amount of time, there are still a few concerns which should be addressed before adoption.

Although the intent of the rulemaking, as described by CARB, is to target upstream entities as the responsible parties for compliance, the drafting of the rule is often vague, leading to the potential that responsibility could be passed on to other parties, such as OCTA, not originally contemplated by the rule. For instance, in the case of compressed natural gas (CNG), the proposed rule states that the owner of the fueling equipment can be the regulated party. At OCTA there is a lease agreement for such fueling equipment. There is concern, therefore, that OCTA as a leasee could be held responsible for meeting the requirements of this rule. More clarification is needed to ensure that through such lease agreements, responsibility is not passed to unintended parties.

The same concern exists in the case of liquefied natural gas (LNG), where the rule states that the responsible party is the owner of the fuel when it is transferred to a fueling tank. This could create a situation where, through contractual terms, the actual fuel provider could pass on responsibility for compliance to unintended parties by including a freight on board (FOB) shipping term in the contract. In cases where a FOB term is included, ownership of the fuel is passed to the recipient from the fuel provider when the fuel is loaded on the truck at the LNG production facility. This could lead to a situation where the intended regulatory entity could escape liability by passing on responsibility for compliance to a party with limited means of fulfilling the regulatory requirements.

These concerns also will carryover as transit agencies begin to explore the use of hydrogen as fuel. According to the proposed rule, the regulated entity is the

Chairman Mary Nichols
April 22, 2009
Page 2

owner of the fuel as it enters the vehicle. These additional liabilities will force transit agencies to be more cautious in the use of hydrogen, thereby potentially delaying exploration of such alternative fuels.

The LCFS also sets forth voluntary opt-in provisions for specific fuels that are presumed to meet the compliance schedules through December 31, 2020. Among those fuels listed is Fossil CNG from North American sources. However, although quite similar, Fossil LNG from the same sources is not on the list. The rule should either include Fossil LNG or an explanation should be provided for why it is not included.

In regards to the economic analysis, further exploration of costs to end users should be explored. There is a lack of analysis of the capital costs associated with new fuels in regards to vehicles and infrastructure, and limited analysis related to the costs of ownership such as maintenance costs, safety enhancements, and potential fuel economy impacts. Furthermore, an overall cost comparison should be completed between a situation in which a LCFS is implemented and a situation in which there is no change in the current fuel standard.

OCTA looks forward to continuing to collaborate with the California Air Resources Board to promote technologies that allow us to provide cost-effective, reliable, and safe transportation to our customers while doing our part to improve California's air quality. If you have any questions please contact me at (714) 560-5584 or Wendy Villa, State Relations Manager, at (714) 560-5595.

Sincerely,



Jim Kenan
Interim Chief Executive Officer

JK:ke