

April 25, 2012

Clerk of the Board
California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronically Submitted to the Clerk of the Board

**Comments Regarding Staff Report on Modified Regulation Order for the
Low Carbon Fuel Standard published April 10, 2012**

Dear Chairman Nichols and Members of the Board,

The San Francisco Public Utilities Commission (SFPUC)¹ and the San Francisco Municipal Transportation Agency (SFMTA) respectfully submit the following comments in accordance with the California Air Resources Board's (ARB's) request for comment on the April 10, 2012 release of the "Notice of Public Availability of Modified Text" and the included "Modified Regulation Order" for California's Low Carbon Fuel Standard (LCFS).

Our comments on the Modified Regulation Order are limited to one specific concern – to ensure that all forms of electrified mass transit are able to participate in the LCFS program. As drafted, the Modified Regulation Order's new definitions of "on-road" and "electric vehicle" may inadvertently exclude some forms of on-road electrified mass transit, for example, electric buses.

Our prior comments have recommended that the LCFS regulations allow all forms of electrified mass transit to earn LCFS credits,² and we very much appreciate that the ARB Board has directed the Executive Officer and ARB staff to investigate the feasibility of including electrified mass transit in future rulemakings. However, ARB's Resolution is limited to including "nonroad" forms of public mass transit.³ This could exclude certain forms of electrified mass transit that operate on-road, such as light rail and buses served by overhead electric lines.⁴ At the same time, the new definitions of "on-road" and "electric vehicle (EV)" included in the Modified Regulation Order appear to inadvertently exclude on-road forms of electrified mass

¹ Through the SFPUC, the City and County of San Francisco (CCSF) provides almost 1 million MWh of electricity annually to San Francisco's municipal facilities, buildings, and their tenants. Approximately 8% of this electricity fuels various forms of electrified transportation, including; electric vehicles, SFMTA's electrified mass transit (light rail, trolley buses, and cable cars), and shore-side power for boats and ships. As an energy provider and fuel supplier, the SFPUC's electricity supplies have amongst the lowest carbon intensity of any public electric utility or transportation fuel provider in California.

² See SFPUC's prior comments submitted to the ARB on December 13, 2011 and October 5, 2011.

³ ARB Resolution 11-39, page 9, "The Board directs the Executive Officer to work with interested stakeholders to investigate the feasibility of developing into regulatory language in future rulemaking(s) the following concepts....Issuing credits for nonroad electricity-based transportation sources, including public mass transit."

⁴ As the SFPUC noted in its prior comments, mass transit does not fit neatly within the "on-road" and "off-road" distinctions made by some parties. For example, San Francisco's electric and hybrid buses, street cars, cable cars and light rail all operate "on road" in San Francisco; our light rail system also operates on physically-separated light rails.

transit. We are concerned that these definitions, together with the “nonroad” limitations for future rulemakings may be too narrow.

Specifically, the new definitions of “on-road” and “electric vehicle (EV)” are used in the Modified Regulation Order to limit the eligibility of electricity used as a transportation fuel, in Section 95484(6) paragraphs (A)-(E). First, paragraphs (A)-(D) limit eligibility to electricity used as a transportation fuel for electric vehicles (EV). In turn, the new definition of electric vehicle “refers to Battery Electric Vehicles (BEVs) and Plug-In Hybrid Electric Vehicles (PHEVs),” limiting EVs to vehicles with on-board batteries, which would exclude both electric buses operating on overhead electric lines and light rail.

Second, while paragraph (E) provides a catch-all for other “measured on-road electricity as a transportation fuel that is not covered in paragraphs (B)-(D),” the new definition of “on-road” is limited to vehicles registered with the DMV, which includes municipal vehicles and would appear to include municipal buses, but may not include light rail that operates on-road.⁵

To ensure that all forms of electrified mass transit are eligible, we recommend that the ARB either (i) expand its resolution to direct future rulemakings to consider eligibility for all forms of electrified mass transit (removing the nonroad qualifier) or (ii) expand the definitions of on-road and electric vehicle in the Modified Regulation Order to include on-road electrified mass transit, such as electric buses and light rail.

The SFPUC and SFMTA fully support the goals and objectives of the Low Carbon Fuel Standard as a means to reduce the carbon content of the State’s transportation fuels, and we encourage the ARB to ensure that its regulations are written to allow all forms of electrified mass transit to participate in the LCFS program. The SFPUC and SFMTA thank the ARB for taking the time to consider our recommendations and we are ready to work with the ARB as needed to implement these recommendations.

/s/ Meg Meal

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⁵ Paragraph (E) is the only paragraph in the Modified Regulation Order that uses the new defined term “on-road.”