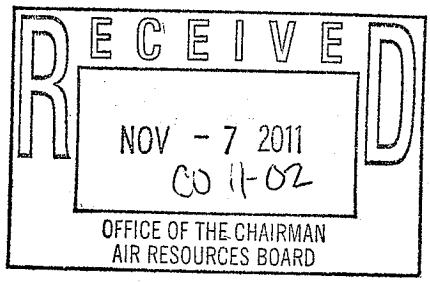
November 2, 2011



Mr. Michael S. Waugh, Chief
Transportation Fuels Branch
California Air Resources Board
1001 I Street, P.O. Box 2815
Sacramento, CA 95812

RE: California Air Resources Board Proposed Regulatory Order for Low Carbon Fuel Standard Program for Regulated Parties for Electricity

Dear Mr. Waugh:

The Electric Vehicle Service and Equipment Provider (EVSEP) Coalition including Better Place, Coulomb Technologies and ECOtality appreciate the opportunity to provide comments to the California Air Resources Board's (CARB) proposed regulatory order for regulated parties for electricity in the Low Carbon Fuel Standard (LCFS) program. As third party providers of electric vehicle services and infrastructure networks, our industry is pioneering new business models and smart charging products that will make electric vehicle driving convenient, empower drivers to manage charging and support grid-wide benefits of EV adoption through provisioning of ancillary services. Our industry serves residential, commercial/public, workplace and fleet customers, providing a range of solutions that make electricity a viable transportation fuel for widespread use. ***We believe that smart charging promotes the most optimal use of charging infrastructure to collect LCFS credits and that through our efforts we are creating the most value for the consumer.***

EV Services Regulatory and Legislative Framework

The State of California has made a commitment to facilitating the competitive market development of EV charging infrastructure services. As currently written, CARB's LCFS program for regulated parties for electricity cannot be implemented as drafted and must be revised to remain consistent with the regulatory and legislative direction established for California. The California Public Utilities Commission, the State Legislature and the Governor have all implemented public policy measures supporting a competitive market in which third party EV charging providers are both customers of the regulated utilities and also customer facing entities connected with the grid.

In Phase 1 of the California Public Utilities Commission (CPUC) Rulemaking proceeding 09-08-009, the Commission ruled that "the ownership or operation of a facility that sells electric vehicle charging services to the public and the selling of electric vehicle charging services from that facility to the public does not make the corporation or person a public utility within the meaning of § 216 solely because of that sale, ownership or operation." The California State Legislature passed and Governor Brown recently signed Assembly Bill 631, which codifies the CPUC Phase 1 decision to not regulate charging services as utilities, providing market certainty for private investment in charging infrastructure and promoting a competitive marketplace for different business models in EV charging services. ***This directly supports consumer choice and competition in services that will ultimately drive down consumer costs of driving electric.***

In Phase 2 of the CPUC's Rulemaking proceeding 09-08-009, the CPUC found that utility ownership of EVSE by regulated IOUs is unlikely to result in safety advantages or reduce customer service costs. The Commission established in Conclusion of Law 20 that IOUs may only own EVSE (except for utility fleet/employee charging) upon providing "convincing evidence" that prohibiting IOU ownership will result in underserved markets or market failures. ***As a result, the Commission ruled in favor of customer and third party ownership of EVSE, including the embedded submetering in EVSE required to collect LCFS credits.***

Today's regulatory and legislative framework clearly recognizes the role of third parties in supporting widespread EV adoption in California, including the deployment of infrastructure and services that make it possible to use electricity as a transportation fuel for our customers. It is imperative that CARB's LCFS regulatory framework aligns with the CPUC and legislative direction, ensuring that LCFS program implementation is consistent with creating a competitive EV market in California. Ultimately, it is the consumer that will benefit from further innovation a variety of technological choices in EV charging services which our companies provide.

EVSEP Coalition Key Principles to LCFS Program

In response to CARB's current definition of regulated parties for electricity, the Coalition is recommending the following modifications:

(1) As a result of current regulatory and legislative policy, the role of IOUs in EV charging services is limited for the purposes of charging its own fleet and workplace charging for employees. This needs to be reflected in the LCFS program.

   a. Third party providers who manage smart EVSE networks should be eligible to become regulated parties for residential, fleet and workplace charging in addition to commercial and public locations. The submetering infrastructure required to measure electricity for LCFS purposes will *not* be owned by the utilities. Instead, customers and third party providers will own submeters in the EVSE and will therefore be in the best position to collect LCFS credits as prescribed by CARB.

b. Where EVSPs are customers of the utility, they should be able to self-select to become regulated parties. Where EVSPs are not customers of the utilities but do provide a service to a utility customer, then the utility customer should be able to opt for the EVSP to be the entity collecting LCFS credits on their behalf as a regulated party. This will eliminate any confusion on who is the eligible entity and minimize the administrative complexity in the program.

c. Utilities should only be eligible as default regulated entity where the customer elects the utility or where neither the customer nor the third party has otherwise elected to become a regulated entity.

d. In the case of utilities ownership, collecting LCFS credits is likely to require the end use customers, particularly in residential, to install an expensive second meter, which increase the overall cost of EV adoption.

e. In the case where utilities own and operate smart grid enabled EVSE in their service territory, the utility would become the default regulated party.

(2) The Coalition strongly agrees with CARB's objective of ensuring that the value and benefit of the LCFS credits is passed on to the consumer to further encourage EV adoption.

a. The owner/operator of the smart grid enabled electric vehicle charging equipment (EVSE) should be able to monetize and apply LCFS credits to the EV cost of ownership less the administrative and operations costs incurred by the regulated party.

b. The program should be structure to encourage and allow entities investing in infrastructure to utilize the value of the LCFS credits toward re-investment in the infrastructure and/or pass-through directly to the end-use customer minus administrative costs incurred by the regulated party. This will ensure that the LCFS credits maximize future impact on EV adoption.

c. To qualify for commercial/public credits, where the utility owns and operates public smart grid enabled EVSE, the utility should be required to utilize LCFS credits collected to offset costs of public charging to all EV customers to encourage its use and ensure a level playing field in the market.

(3) The use of LCFS credits by utilities must be tightly defined to avoid unintended consequences on the competitiveness of the EV services market and to ensure transparent and consistent implementation for consumers.

a. Credits should NOT be used by utilities to subsidize or otherwise promote their own charging equipment, installation or services.

b. Utilities should be required to return the value of any LCFS credits to the customer through a cash rebate or other mechanism that allows the value to be re-invested in the cost of EV ownership.

c. Any "public education" provided by utilities supported by LCFS proceeds should be clearly defined with performance metrics, such that the value to the consumer is clear and they return the maximal value to the customer. The education must be competitively neutral. CARB should set more explicit rules on public education that make it clear the education should focus on the overall benefits of EV adoption, not a specific utility's product or service offering.

The changes described above would align the current program structure with CARB's four main objectives for the LCFS implementation, and would avoid entirely making any pre-judgement on business models or the evolution of the EV services market. With these changes, the program would maximize the role of the customer and remain consistent with current California regulatory and legislative policy to support a competitive market.

CARB Principles for LCFS Program Participation

A. Return Value to the EV Owner

Each of our companies is developing and investing in infrastructure networks and services, including smart charging technologies that will generate value to the EV owner. The proposed regulation must recognize the value-added role of companies that invest in the deployment of charging infrastructure that enables EV adoption and smart energy usage. In its Phase 2 decision, the CPUC ruled that a sub-metering protocol should be established to facilitate the measurement of electricity used as a transportation fuel through meters located inside of charging equipment (EVSE) located on the customer side of the meter. The smart metering technology located inside of our equipment will provide the following benefits to the EV owner:

- Economical installation cost
- Monitor energy usage and demand
- Support energy usage data evaluation
- Conduct energy billing
- Leverage most optimal utility rates
- Provide accurate data for reporting under LCFS regulations
- Provide accurate data for IEC standards for accuracy of the recorded power usage
- Enable data storage, connections, and data transfer to back office operations

The creation of the fund controlled by the utilities does not achieve CARB's goal of "benefitting EV customers". Education and outreach activities are already funded by government agencies such as the California Energy Commission through AB 118 funding. In addition, funding has appropriately been directed towards cities and

other stakeholder groups that support EV deployment to engage in education and outreach activity. The focus of EV customer benefit should be directed to further investments in the deployment of grid enabled EVSE that assists CARB to meet AB 32 standards. Moreover, the Phase 2 decision directed the utilities to "request approval for ongoing or future education costs education and outreach efforts within their general rate cases" (p. 64 Phase 2 Decision). The approach proposed in this regulatory order is at odds with the direction of the Commission.

B. Maximize Credits for the LCFS Program

Our companies possess a great ability to maximize credits for the LCFS program through our residential, commercial, fleet, workplace and public charging deployment and offering our customers the option to pass their credits through to reinvest in charging technology advancements, ancillary services, operations and maintenance and expanded infrastructure. Our companies have and will promote the use of electric vehicles and associated fueling infrastructure, develop products to increase the utilization of electric transportation, with its concomitant increase in LCFS credits, and operate an integrated charging network that incorporates both residential and public charging in a seamless infrastructure grid. Simply providing electricity has not and will not promote electric transportation nor maximize credits for the LCFS program.

C. Reward Innovation

As currently drafted, the proposed language does not recognize the innovation and technology advancements of EVSE manufacturers like Better Place, Coulomb and ECOtality, including the ability to sub-meter and calculate the credits independent of the utility system. In addition, the proposed regulations could result in the unintended consequence of driving up costs to EV owners by forcing the purchase of a separate utility meter in order to capture the special EV rates and LCFS credits. This would undermine the intention of the CPUC Phase 2 decision in directing the utilities to support and implement a submeter protocol to provide consumers with lower cost alternatives.

Proposing utilities as the only default party able to "opt in" to the credits negates the fact of the valued innovation and investment being introduced to the EV charging services market by our companies. As demonstrated by Coulomb and ECOtality's current federal ARRA projects, utility involvement with residential infrastructure installation, in the form of metering to allow calculation of LCFS credits has, in fact, both delayed EVSE installation and very significantly increased its cost.

D. Keep Program Simple to Account for Changing Business Models

Although Better Place, Coulomb and ECOtality differ in business models, the companies are all introducing smart connected and grid enabled technologies to the EV charging services marketplace and will have contractual relationships with

residential, commercial, fleet, workplace and public charging clients. The proposed regulation for regulated parties for electricity should recognize contractual relationships and that charging providers are installing smart infrastructure. Third party providers who meet these criteria should be eligible to collect residential and commercial credits as well as act as default parties eligible to "opt in" for credits for workplace and fleet customers.

Conclusion

By investing in the deployment of charging infrastructure for public and private use, and through innovative smart charging technology, Better Place, Coulomb Technologies and ECOtality are optimizing a physical pathway for dispensing electricity as a transportation fuel. To maximize the LCFS program, it is imperative that CARB staff implement a program consistent with current California regulatory and legislative policy and acknowledges the technological innovation, benefits and role third party infrastructure providers are playing in enabling optimal energy consumption to support usage of electric vehicles. The EVSEP Coalition looks forward to working with staff to clarify the proposed regulation. Please do not hesitate to contact us if you have any questions regarding our position on this matter.

Sincerely,

By: _____/s/_ Jason Wolf_____
Jason Wolf
Vice President, North America
Better Place

By:_____/s/_ Don Karner_____
Don Karner
President
ECOtality North America

By: _____/s/_ Richard Lowenthal____
Richard Lowenthal
Chief Technology Officer
Coulomb Technologies, Inc.

cc: Mary Nichols, Chairman
Robert D. Fletcher, Deputy Executive Officer
Richard W. Corey, SSD
Carolyn Lozo, SSD
Nancy Ryan, CPUC

Attachment:

A) Current Proposed Regulatory Order for Low Carbon Fuel Standard Program for Regulated Parties for Electricity

ATTACHMENT A

The attached currently proposed language for CARB's Low Carbon Fuel Standard Proposed Regulation for Regulated Parties for Electricity needs to be modified to reflect the regulatory and legislative framework in California which clearly recognizes the role of third parties in supporting widespread EV adoption in California, including the deployment of infrastructure and services that make it possible to use electricity as a transportation fuel. It is imperative that CARB's LCFS regulatory framework aligns with the adopted actions taken by the CPUC, State Legislature and Governor, ensuring that LCFS program implementation is consistent with creating a competitive EV market in California.

When a person who is the regulated party for a fuel specified in section 95484(a)(5)(A), (B), or (C) transfers ownership of the fuel, the transferor remains the regulated party unless the conditions of section 95484(a)(5)(D)2. are met.

2. *Conditions Under Which a Person Acquiring Ownership of a Fuel Becomes the Regulated Party.* Section 95484(a)(5)(D)1. notwithstanding, a person acquiring ownership of a fuel specified in section 95484(a)(5)(A), (B), or (C) from the regulated party becomes the regulated party for that fuel if, by the time ownership is transferred, the two parties agree by written contract that the person acquiring ownership accepts the LCFS compliance obligation as the regulated party. For the transfer of regulated party obligations to be effective, the transferor must also provide the recipient a product transfer document that prominently states:

   a. the volume and average carbon intensity of the transferred fuel; and

   b. the recipient is now the regulated party for the acquired fuel and accordingly is responsible for meeting the requirements of the LCFS regulation with respect to the acquired fuel.

(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 a single or multi-family residence, the Electrical Distribution Utility 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. use all credit proceeds as direct benefits for current EV customers and to provide public EV education as specified in requirement (3) below.

2. provide rate options that encourageoff-peak charging and minimize adverse impacts to the electrical grid.

3. educate the public on the benefits of EV transportation (including environmental benefits and costs of EV charging as compared to gasoline) through outreach efforts intended to attract additional EV customers. The use of any LCFS proceeds to fund such efforts shall not be used to replace other sources of funding for similar efforts. These efforts 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

4. include in annual compliance reporting an itemized summary of efforts to meet requirements 1, 2, and 3; costs associated with meeting the requirements; an accounting of credits generated, sold, and banked; and an accounting of the number of EVs known to be operating in the service territory. The reports must demonstrate that LCFS proceeds were used to fund efforts that would not otherwise have occurred. The annual compliance reports will be posted for public review by April 30th.

(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 lessee 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 is not the regulated party for a specific volume of fuel, or has not fully complied with the requirements of this subarticle, the Electrical Distribution Utlity is eligible to opt-in as the regulated party with EO approval. To receive credit for transportation fuel supplied through public access EV charging equipment, the regulated party must:

1. use all credit proceeds as direct benefits for current EV customers and to provide public EV education as specified in requirement (3) below.

2. provide rate options that encourage off-peak charging and minimize adverse impacts to the electrical grid.

3. educate the public on the benefits of EV transportation (including environmental benefits and costs of EV charging as compared to gasoline) through outreach efforts intended to attract additional EV customers. The use of any LCFS proceeds to fund such efforts shall not be used to replace other sources of funding for similar efforts. These efforts 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

4. include in annual compliance reporting an itemized summary of efforts to meet requirements 1, 2, and 3; costs associated with meeting the requirements; an accounting of credits generated, sold, and banked; and an accounting of the number of operating EV charging stations and the number of charging incidents. The reports must demonstrate that LCFS proceeds were used to fund efforts that would not otherwise have occurred. The annual compliance reports will be posted for public review by April 30th.

(C) For transportation fuel supplied to a fleet of three or more EVs, a company operating a fleet (fleet operator) is eligible to be a regulated party. If the fleet operator is not 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 is eligible to opt-in as the regulated party with EO approval. For transportation fuel supplied to a fleet of less than three EVs, the Electrical Distribution Utility 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 compliance 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 is not the regulated party for a specific volume of fuel, or has not fully complied with the requirements of this subarticle, the Electrical Distribution Utility is eligible to opt-in as the regulated party with EO approval. To receive credit for transportation fuel supplied through private access EV charging equipment at a business or workplace, the regulated party must:

1. 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

2. include in annual compliance 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 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. To receive credit for this transportation fuel, the Electrical Distribution Utility must meet all requirements stipulated in 6(A).

~~(A) The load-serving entity or other provider of electricity services, unless section 95484(a)(6)(B), (C), or (D) below applies. "Load-serving entity" has the same meaning specified in Public Utilities Code (PUC) section 380. "Provider of electricity services" means a local publicly-owned utility, retail seller (as defined in PUC section 399.12(g)), or any other person that supplies electricity to the vehicle charging equipment;~~

~~(B) The electricity services supplier, where "electricity services supplier" means any person or entity that provides bundled charging infrastructure and other electric transportation services and provides access to vehicle charging under contract with the vehicle owner or operator;~~

~~(C) The owner and operator of the electric charging equipment, provided there is a contract between the charging equipment owner-operator and the provider of electricity services specifying that the charging equipment owner-operator is the regulated party;~~

~~(D) The owner of a home with electric vehicle charging equipment, provided there is a contract between the homeowner and provider of electricity services specifying that the homeowner may acquire credits.~~