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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions.	Rulemaking 11-03-012 (Filed March 24, 2011)

ADMINISTRATIVE LAW JUDGES' RULING PROVIDING GUIDANCE ON TRACK 2 ACTIVITIES

1. Summary

This ruling provides guidance to parties on the deliverables in Track 2 of Rulemaking 11-03-012, which addresses the allocation of revenues from Low Carbon Fuel Standard (LCFS) credits. In addition to confirming, with minor modifications, the schedule established for this proceeding track in the September 1, 2011 Scoping Memo and Ruling as modified by the Joint Administrative Law Judges' November 16, 2011 ruling, this ruling distributes a staff document suggesting several policy objectives for use in developing and evaluating proposals for the use of LCFS credits. The staff document also offers some potential uses for LCFS credit revenues for parties to consider as they develop their own proposals for allocation of these revenues.

2. Background

On March 30, 2011, the Commission issued an Order Instituting Rulemaking to address the use of revenues generated from the sale of greenhouse gas emissions allowances allocated to the electric utilities by the California Air Resources Board (ARB) pursuant to Assembly Bill 32, as well as the use of revenues the electric utilities may receive from the sale of LCFS credits. The Assigned Commissioner and Administrative Law Judges' Joint Scoping Memo and Ruling (Scoping Memo) issued on September 1, 2011, dedicated Track 2 of this proceeding to the determination of the use of revenues from the sale of LCFS credits. The schedule established in the Scoping Memo anticipated that Track 2 would begin on January 12, 2012, with the issuance of proposed policy objectives for this track, to be prepared by Commission staff. On November 16, 2011, Administrative Law Judges (ALJ) Semcer and Hecht issued a revised schedule for this proceeding under which Track 2 would begin on February 1, 2012.

On December 29, 2011, a United States (U.S.) District Court ruled that the California LCFS program violates the Commerce Clause of the United States Constitution and is therefore unconstitutional. This ruling imposed an injunction preventing ARB from implementing the LCFS at least until the U.S. Ninth Circuit Court of Appeals rules on ARB's appeal of the court's determination. Though the injunction and ongoing appeal process create uncertainty in the status and future of the LCFS program, we are launching Track 2 at this time in order to ensure that we address the issues within our jurisdiction and are prepared when and if the injunction is lifted and the LCFS is implemented. On January 31, 2012, ALJ Semcer informed the service list via electronic mail that we would issue a ruling in early February that contains guidance for parties as we begin the LCFS track of this proceeding. This ruling provides that guidance.

3. LCFS Revenues to Utilities

Under the current LCFS regulations, regulated entities earn credits for using transportation fuels that meet or surpass requirements for carbon intensity.[1] According to the regulation, utilities will receive credits generated by their residential customers when those customers charge electric vehicles through their home electric service. Utilities may then sell those credits, generating revenues that they may use for purposes allowed for under the LCFS regulation. As provided in the scoping memo issued on September 1, 2011, the purpose of Track 2 of this proceeding is to determine how the electric and gas utilities under Commission jurisdiction will use revenues from the sale of LCFS credits that they receive from ARB. The LCFS regulations developed by ARB require that the revenues from credits received by utilities meet the following requirements:

1. LCFS value must be used to the benefit of current plug-in electric vehicle (PEV) drivers;
2. The utility must administer PEV adoption education/outreach programs; and
3. The utility must provide rate options that encourage off-peak charging.

4. Policy Objectives

As in Track 1 of this proceeding, we wish to propose key policy objectives that will help inform both the development of party proposals addressing the use of revenues from LCFS credits and our evaluation of those proposals. The three requirements established in the ARB rule serve as guidelines that we must consider in our evaluation of any proposal. In addition, several of the policy

[1] Carbon intensity is the amount of carbon, by weight, emitted per unit of energy consumed. In general, low carbon intensity fuels are considered less polluting than higher carbon intensity fuels because their use results in the release of less carbon into the atmosphere.

objectives suggested in Track 1 of this proceeding may also be relevant in this track. The staff document attached to this ruling provides a discussion of some of the objectives that staff believe may be relevant to evaluating proposals in this track of the proceeding. The objectives identified by Energy Division staff, which are further described in the attachment, suggest that proposals should:

- be simple to administer;
- minimize the grid impacts of EV adoption; and
- facilitate and increase the adoption of electric vehicles.

Parties are encouraged to comment on the relevance and usefulness of these proposed objectives in their initial proposals for the use of the LCFS credit revenues, which shall be filed by March 8, 2012. In addition, parties may recommend additional policy objectives (either new or developed through Track 1 of this proceeding) in their proposals.

5. Proposals for Use of LCFS Revenues

As in Track 1, all parties to this proceeding have the opportunity to submit proposals setting forth recommendations for the use of revenues for LCFS Credits. In order to ensure that initial proposals are as robust as possible, proposals should, to the extent possible, conform to the requirements for Track 1 proposals described in Section 6 of the September 1, 2011, Scoping Memo and Ruling. In summary, proposals shall include the following information:

1) A detailed description of the proposed use or uses of the revenues generated from the sale of LCFS credits;

2) A discussion of how the proposal does or does not meet each of the policy objectives…, as well as how the proposal does or does not advance any other policy objectives the party may have identified; and

3) A discussion of how the proposal meets previous guidance set forth by ARB and the CPUC along with a discussion of any

jurisdictional limitations of either agency that may affect implementation of the proposal.

Please refer to the Scoping Memo and Ruling for additional detail on the format and contents of proposals.

6. Schedule

The schedule for the remainder of Track 2 remains as established in the Joint Administrative Law Judges' November 16, 2011 Ruling Adopting a Modified Schedule, and reproduced below:

Track 2: LCFS Credit Revenue Allocation

Date	Item
March 8, 2012	Parties file and serve LCFS credit revenue allocation proposals
March 28-29, 2012	Workshop to discuss LCFS credit revenue allocation proposals
April 11, 2012	Parties file and serve revised LCFS credit revenue allocation proposals
May 2-3, 2012	Workshop to discuss LCFS credit revenue allocation proposals
May 23, 2012	Concurrent opening comments filed and served on LCFS credit revenue allocation proposals
June 20, 2012	Concurrent reply comments filed and served on LCFS credit revenue allocation proposals
June 20, 2012	Deadline for requests for hearings on LCFS credit revenue allocation proposals
July 9, 2012	Ruling on requests for hearings on LCFS credit revenue allocation proposals
October, 2012	Proposed Decision on LCFS credit revenue allocation proposals (assuming hearings and briefing are not required)

As provided in the Scoping Memo and Ruling, the assigned Commissioner or ALJs may modify this schedule as necessary for the reasonable and efficient conduct of this proceeding.

IT IS RULED that:

1. The schedule for Track 2 of this proceeding is as stated in Section 6 of this ruling.

2. The format and contents of parties' proposals for the use of Low Carbon Fuel Standard credits shall be consistent with the requirements in Sections 3, 4, and 5 of this ruling.

3. The Administrative Law Judges may modify the schedule adopted herein as necessary for the reasonable and efficient conduct of this proceeding.

4. The procedural and other requirements established in the Scoping Memo and Ruling remain in place for Track 2 of this proceeding.

Dated February 8, 2012, at San Francisco, California.

/s/ MELISSA K. SEMCER
Melissa K. Semcer
Administrative Law Judge

/s/ JESSICA T. HECHT
Jessica T. Hecht
Administrative Law Judge

ATTACHMENT A

Energy Division Staff Guidance on Policy Objectives and Proposals for the Use of Low Carbon Fuel Standard Credits

Addressing the use of utility-allocated Low Carbon Fuel Standard (LCFS) credits was identified as a Phase 2 issue in this proceeding. The Low Carbon Fuel Standard is an Air Resources Board (ARB) administered program that seeks to reduce the carbon content of transportation fuels. The program establishes carbon intensity standards through 2020 for transportation fuels as well as a crediting scheme whereby regulated fuel suppliers that surpass the standard receive credits that can be sold to fuel suppliers that are unable to meet the standard. Under this scheme electricity that is used to fuel electric vehicles[1] will receive LCFS credits. The entities that actually receive the credits associated with electricity depend on the context of the electricity usage. ARB has specifically recognized utilities as the recipient of credits in circumstances where the electric vehicle fuel is drawn from a residence.

In this proceeding the Commission will determine how utilities will use the value of the LCFS credits that may accrue to them pursuant to the ARB rules. In staff's view, the use of these revenues should advance or be consistent with the following four principles:

1.) *Administratively simple* – The allocation and use of any value derived from the sale of LCFS emission credits should be inexpensive to implement and straightforward to understand.

2.) *Minimize the grid impacts of plug-in electric vehicles (PEVs) adoption* – Any use of allowance revenues should be consistent with the Commission's interest in promoting charging during off-peak times and otherwise reducing the grid impacts of PEV adoption.

3.) *Facilitate the adoption of PEVs* – The use of allowance revenues should further stimulate the rate of adoption of electric vehicles.

[1] http://www.arb.ca.gov/regact/2011/lcfs2011/lcfs2011.htm.

4.) *Consistent with ARB eligibility criteria* – In its regulation, ARB established three criteria for a utility to be eligible to receive LCFS credits: 1.) LCFS value must be used to the benefit of current PEV drivers; 2.) The utility must administer PEV adoption education/outreach programs; 3.) The utility must provide rate options that encourage off-peak charging.

In addition to these four principles, below staff identifies four possible uses of the revenue derived from the sale of LCFS credits. These do not represent the universe of potential uses but are uses that staff believes merit consideration. Each of these includes several optional design elements that would need to be determined in the final Commission recommendation. Note that these potential uses are not necessarily exclusive and could be used in combination with one another:

1.) *Use revenue to reduce electric vehicle rates* – Each utility currently offers multiple electric vehicle tariff rates for residential customers. The return of revenue to PEV drivers could be accomplished by using any revenues generated from the sale of LCFS credits to reduce PEV rates. In the CPUC Alternative-Fueled Vehicle proceeding, the Commission recognized the importance of encouraging nighttime charging to realize the full benefits of electric vehicle adoption. If LCFS value is used to reduce rates, Energy Division staff recommends that this value be directed toward reducing nighttime charging rates. The value could be used to create a 'super off-peak rate' during low usage nighttime hours (usually between 2-5am). In the future, the value could also be used to create attractive 'smart charging' rates, which could provide incentives for drivers who allow the utility to control the rate of charge to respond to grid needs. However, we note that not all electric vehicle users will be on PEV tariffs, since the utilities no longer require that PEV drivers use these tariffs. If many PEV drivers do not use PEV tariffs, this method of auction revenue return may not be effective at directing value to current PEV drivers.

2.) *Use LCFS revenue to subsidize utility infrastructure upgrade cost* – Under the rules adopted in D.11-07-029, the Commission determined that utility infrastructure upgrade costs associated with electric vehicles would be socialized until July 2013. At that time, the Commission will re-evaluate its treatment of these costs. Using the LCFS value to reduce these costs would reduce the cost burden for all ratepayers during the period of time that these costs are socialized. This may or may not meet ARB's requirement that the value be used for the direct benefit of current PEV drivers. If the Commission determines that these upgrade costs are the responsibility of PEV users, then this method would be a direct benefit to PEV drivers.

3.) *Use LCFS revenue to benefit Electric Vehicle Service Providers (EVSP)* – Under the rules set forth in D.11-07-029, electric vehicle service providers are allowed to provide charging services in residential settings. Since the utility is not allowed to own charging stations, EVSPs may play an important role in deploying charging stations to households in California. Where this is the case, the utilities may be justified in providing LCFS value to EVSPs. It is unclear if this method would meet ARB's stated requirement of returning value directly to current PEV drivers.

4.) Return value in the form of an annual rebate to PEV drivers – Under this method, utilities would return LCFS credits directly to drivers in the form of an annual check or annual on-bill rebate. Returning LCFS credits through an annual rebate does not appear to have the same justification as an annual rebate in the context of carbon auction revenue. The central goal of the cap-and-trade program is to internalize the cost of carbon emissions in customer prices. An annual rebate for carbon revenues can serve as a mechanism for returning revenues to customers that avoids diminishing the carbon price signal to energy users. Returning LCFS credit through PEV rates does not appear to raise these concerns. Given that the LCFS program is intended to encourage the use of low-carbon fuels, using LCFS revenue to reduce the cost of electricity used as transportation fuel is consistent with the goals of the LCFS program.

(END OF ATTACHMENT A)