



October 17, 2022

Liane Randolph, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted online to: <https://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Support for the Advanced Clean Fleets Rule with Modifications

Southern California Edison (SCE) appreciates the opportunity to provide comments on the Proposed Advanced Clean Fleets (ACF) Rule, which was posted by the California Air Resources Board (CARB) on August 30, 2022.

SCE supports the ACF Rule with modifications

SCE supports California's ambitious air and climate goals and is committed to assisting customers through the transition to a decarbonized economy. Additionally, SCE supports a successful ACF Rule because it will help meet these goals by reducing greenhouse gas emissions and improving air quality, particularly in communities disproportionately burdened with air pollution impacts.

In support of regulations such as CARB's Advanced Clean Cars II and the Proposed ACF Rule, SCE is planning the grid for large-scale electrification. For example, SCE and the other investor-owned utilities requested and recently obtained approval from the California Public Utilities Commission to use higher forecasts than traditionally used to account for the needs of the ACF Rule and help ensure the grid is ready for a high-electrification future. However, as discussed below, SCE needs additional data from the fleets to better understand where and when the EV charging will occur to help ensure that updates to the grid are made in the right place, at the right time.

SCE appreciates CARB staff's efforts to collaborate with stakeholders and refine the draft requirements to clarify and address operational concerns. For example, among other things, CARB staff improved the implementation timing for the High Priority and Federal Fleet Model Year Schedule by adding a purchase order timeframe, in addition to a delivery timeframe, for zero emission vehicles (ZEVs).

While the Proposed ACF is moving in the right direction, SCE believes a few modifications are needed to further clarify requirements and address implementation challenges. SCE appreciates the opportunity to offer its comments and the following recommendations.

1. A Commercial Availability Definition Is Needed and Should Require That a Minimum of Three OEMs Produce the Vehicle and that Commercially Ordered Vehicles Have Been Delivered

SCE supports the inclusion of the ZEV Unavailability Exemption process in Section 2015.3(e) and CARB staff's efforts to address operational concerns with the process. Section 2015.3(e) proposes that the Executive Officer will maintain an online list of commercially unavailable vehicles and establishes a process to add or remove vehicles from the list.¹ While SCE believes that the draft language is a step in the right direction, this section does not establish or define requirements needed for a vehicle to be determined commercially available.

Specifically, the requirement does not establish any protections for fleets when only a single or limited number of vehicle chassis or conversions are available, or when a product has been announced but not yet built or tested. Fleets are likely to spend hundreds of thousands of dollars on the purchase of new ZEVs, and as with any purchase, should be allowed to consider factors such as warranty, durability, service options, manufacturer reliability, and price. When multiple options are available, fleets can choose the vehicle that best meets their needs. However, if there is only a single ZEV or NZEV available – even if it is a bad option – under the current draft language, the fleet owner may be required to procure it (if they needed to add a vehicle under the Model Year Schedule option).

To avoid this scenario, SCE recommends that CARB establish a commercial availability definition that at a minimum requires that at least three (3) original equipment manufacturers (OEMs) have delivered the vehicle and that it is commercially available for purchase (e.g., OEMs are accepting procurement contacts and have delivered the first ordered, working, and successful units to customers). The inclusion of these two requirements will help mitigate risks in procurement and avoid the potential for increased exemption requests when a vehicle is identified as available in the market but not available for purchase.

2. The Executive Officer Should Have Discretion to Adjust the Infrastructure Construction Extension Beyond a Pre-established Timeframe

The Proposed ACF establishes an infrastructure construction delay extension for state and local government agency fleets, high priority and federal fleets, and drayage truck requirements.² Generally, fleet owners may apply for an extension if they experience a delay beyond their

¹ Proposed Regulation Order, Advanced Clean Fleets Regulation: High Priority and Federal Fleet Requirements, Section 2015.3(e).

² See Section 2013.1(c) (state and local government agencies); Section 2015.3 (c) (high priority and federal fleets); and Section 2014.2(b) (drayage).

control on a project to purchase ZEVs and install ZEV charging stations, and the fleet owner can provide documentation showing a construction start date one year prior to the compliance period for the purchased ZEV.³ However, under the Proposed ACF, the Executive Officer is limited to granting a single one-year extension per project.⁴

While a one-year extension may generally be reasonable, it is an arbitrary number that may not be feasible for **every** EV charging infrastructure construction project to meet. For example, SCE has experienced situations in which an environmental mitigation effort took more than a year to complete. The Proposed ACF presumes that all issues can be addressed within a one-year period and does not acknowledge or allow for situations in which additional time is needed. Specifically, it does not provide the Executive Officer with flexibility to consider or allow for any additional time, even if demonstrated that the fleet owner took timely and appropriate steps and that the additional time is still necessary.

Therefore, SCE respectfully requests that CARB grant to the Executive Officer discretion to adjust the compliance timeframe in response to individual situations, when it is demonstrated that through no fault of the fleet owner, additional time is required to complete the infrastructure construction.

3. The Advanced Clean Fleets Rule Should Require Fleets to Develop and Report ZEV Transition Plans to Support Utility Grid-Planning Efforts

Certain grid upgrades will be needed to support the transition to a decarbonized economy. To prepare, SCE has been working with regulators to ensure that the EV forecast used for grid planning is aligned with state policies. Additionally, SCE has been encouraging fleets within its territory to share their transportation electrification plans to help us better understand where specific infrastructure upgrades are needed. SCE appreciates and commends the fleets that have already engaged with SCE to share their prospective plans. However, SCE is concerned that a voluntary request to share information will not sufficiently motivate fleets to develop or share their plans with the utility, which will impair SCE's ability to appropriately identify and address necessary upgrades.

To help electric utilities like SCE better understand where to plan for needed infrastructure and grid upgrades, SCE recommends that the Proposed ACF rule include a requirement for fleets to develop and report ZEV transition plans that can inform state agency and utility transportation electrification and system planning purposes. SCE requests that CARB collect and share information from fleets related to vehicle type, total numbers of vehicles, fuel type/charging type, locations where vehicles are domiciled, operational profile, and timeline. Providing this type of information to other state agencies and the electric utilities will help them better understand and prioritize the grid infrastructure upgrades needed to support the transition to ZEVs and the State's air and climate goals.

³ *Id.*

⁴ *Id.*

4. Clarification Is Needed to Ensure the ACF Rule Does Not Hamper Utility Emergency Operations

Section 2015(b) provides definitions for “[e]mergency operations” and “[e]mergency support vehicle.” Both definitions state that outside of those vehicles defined in California Vehicle Code Section 165 as emergency vehicles, in order to be considered as an emergency support vehicle, the vehicle must be “dispatched by a local, state, federal, or other responsible emergency management agency” to provide services or supplies in connection with an emergency operation.⁵ In emergency situations, SCE and other utilities do not typically wait for requests from emergency personnel before sending crews to repair damaged infrastructure. For a utility vehicle to be considered as an emergency support vehicle under Section 2015(b), the utility would need to delay its response to an emergency event until it is dispatched by local, state, federal or other emergency management rather than using their normal dispatching protocols. SCE believes this lack of clarity was likely an oversight but is one that must be addressed to ensure that appropriate utility vehicles are not inadvertently excluded from consideration as emergency support vehicles. Therefore, SCE respectfully requests that CARB modify the Emergency Operations and Emergency Support Vehicle definitions as proposed language in Appendix A to this letter.

5. CARB Should Clarify that the Definition for Common Ownership or Control Is Specific to Exclusive and Long-Term Relationships

Section 2015(a)(1)(A) establishes that the High Priority and Federal Fleet requirements are applicable to entities or combination of entities operating under “common ownership or control.”⁶ Section 2015(b) defines “common ownership or control” as, among other things, “[v]ehicles owned by different entities but operated using common or shared resources to manage the day-to-day operations using the same motor carrier number, displaying the same name or logo, or contractors whose services are under the day-to-day control of the hiring entity are under common ownership or control.”⁷ Additionally, Section 2015(b) defines “controlling party” as a “motor carrier, broker, or entity that directs or otherwise manages the day-to-day operation of one or more fleets under common ownership or control to serve its customers or clients.”⁸

While the term “ownership or control” would seem to imply some type of exclusive, longer-term, or permanent relationship, as drafted the definition within the Proposed ACF Rule would establish that any vehicle using the same name/logo of the fleet would be considered under common ownership or control – even if the period when they were working with the fleet was for a short term, such as a week or a month. Forcing companies to ensure that all contractors and their subcontractors – even those hired for limited terms – are in compliance with the ACF Rule would require a burdensome amount of recordkeeping.

⁵ Section 2015 (b).

⁶ Section 2015(a)(1)(A).

⁷ Section 2015(b).

⁸ *Id.*

Therefore, SCE requests that CARB modify the “common ownership or control” and “controlling party” definitions to specify that they are specific to exclusive and long-term relationships. SCE offers some recommended language for CARB’s consideration in Appendix A.

6. CARB Should Clarify that Implementation Timing for the Requirement to Hire Compliant Fleets and Clarify that the Requirement Does Not Extend to Subcontractors

The Proposed ACF Rule establishes a requirement to hire compliant fleets.⁹ Specifically, the Proposed ACF Rule states that hiring entities subject to the requirements must “[v]erify that each fleet it hires or dispatches is listed on the CARB Advanced Clean Fleets webpage as a compliant fleet.”¹⁰ Although it is presumed that CARB will have completed the issuance of all certificates of reported compliance prior to the implementation of this requirement, the Proposed ACF Rule does not specify this timing.

Therefore, SCE requests that CARB modify the requirement to ensure this implementation timeframe is clear. Specifically, SCE requests that the Verification of Compliance Section is modified to include the following language: “After CARB has completed the issuance of all Certificates of Reported Compliance, verify that each fleet it hires or dispatches is listed on the CARB Advanced Clean Fleets webpage as a compliant fleet.”¹¹ Otherwise, fleet owners who are hiring or dispatching fleet contractors prior to the update may be basing contractor hiring decision(s) on the incomplete information available.

Additionally, because contractors may elect to utilize subcontractors, potentially without sharing the subcontractor information, SCE requests that CARB include language to make clear that required fleet owners are only responsible for validating compliance for contractors they directly hire and are not responsible for verifying compliance for subcontractors hired by contractors. SCE offers some recommended language for CARB’s consideration in Appendix A.

Thank you for considering our comments regarding this important regulation.

Sincerely,

/s/ Rosalie Barcinas

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⁹ Sections 2015(g) & 2013(i).

¹⁰ Section 2015(g)(1).

¹¹ *Id.*

APPENDIX A

SCE respectfully requests the following modifications to the following definitions, Section 2015(b) in the High Priority and Federal Fleet Requirements. Proposed additions are shown in blue underlined text and proposed deletions are shown in ~~red strikethrough text~~.

“Emergency operations” means operation of an emergency support vehicle to help alleviate an immediate threat to public health or safety in response to a declared emergency event. Emergency operation includes emergency support vehicle travel to and from a declared emergency event when dispatched by a local, state, federal, or other responsible emergency management agency, or by a utility to restore utility service disrupted by a declared emergency event. Routine operation to prevent public health risks does not constitute emergency operation.”

“Emergency support vehicle” means a vehicle other than an authorized emergency vehicle as defined in California Vehicle Code (CVC) section 165 that has been dispatched by a local, state, federal, or other responsible emergency management agency, or by a utility to restore utility service disrupted by a declared emergency event, that is used to provide transport services or supplies in connection with an emergency operation.”

“Common ownership or control” means being owned or managed on a day-to-day basis by the same person or entity. Vehicles managed by the same directors, officers, or managers, or by distinct corporations that are controlled by the same majority stockholders are under common ownership or control, even if their titles are held by different business entities or they have different taxpayer identification numbers. A vehicle is under an entity’s control if the vehicle is operated using that entity’s state or federal operating authority or other registration. Vehicles owned by different entities but operated using common or shared resources to manage the day-to-day operations or by using the same motor carrier number or permanently and exclusively displaying the same name or logo are under common ownership or control. ~~or~~ Contractors whose services are under the exclusive day-to-day control of the hiring entity for a period of one year or longer are considered to be under common ownership or control for purposes of compliance with sections 2015 (d) and (f) below. Common ownership or control of a federal government vehicle shall be the primary responsibility of the governmental agency that is directly responsible for the day-to-day operational control of the vehicle. Common ownership or control includes relationships where the controlling party has the exclusive right, for a period of one year or longer, to direct or control the vehicle as to the details of when, where, and how work is to be performed or where expenses for operating the vehicle, such as fuel or insurance, are shared. Common ownership or control does not include agreements for individual loads ~~that are competitively bid and issued to the lowest qualifying bid~~.

“Controlling party” means the motor carrier, broker, or entity that directs or otherwise exclusively manages the day-to-day operation of one or more fleets under common ownership or control to serve its customers or clients.

Additionally, SCE respectfully requests the following proposed modifications to Section 2015(g)(1) within the Requirement to Hire Compliant Fleets. Proposed additions are shown in blue underlined text and proposed deletions are in shown in ~~red strikethrough text~~.

Verification of Compliance. After CARB has completed the issuance of all Certificates of Reported Compliance, ~~V~~verify that each fleet it hires or dispatches is listed on the CARB Advanced Clean Fleets webpage as a compliant fleet. Alternatively, for each calendar year that an entity hires a fleet to operate in California, it must obtain a signed statement from the fleet stating it is not subject to the High Priority and Federal Fleets regulation of title 13, CCR section 2015 through 2015.6, the State and Local Government Fleets regulation of title 13, CCR section 201 through 2013.4, and the Drayage Fleet Requirements regulation of title 13, CCR section 2014 through 2014.2. If a contractor hired by a hiring entity hires its own subcontractor, that contractor shall be considered the hiring entity for the subcontractor, and the contractor’s hiring entity shall not be held responsible for the contractor’s failure to comply with this section in the hiring of its subcontractor.