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Re: Association of California Water Agencies' Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation State and Local Government Agency Fleet Requirements

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide public comments to the California Air Resources Board (CARB) in response to the recent Advanced Clean Fleets Initial Statement of Reasons and Draft State and Local Government Agency Fleet Requirements (Draft ACF). ACWA represents more than 460 public water agencies that collectively deliver approximately 90 percent of the water in California for domestic, agricultural, and industrial uses. We appreciate CARB staff's work to incorporate stakeholder input in the Draft ACF. We encourage CARB to continue to engage with stakeholders to finalize a regulation that accelerates the deployment of Zero Emission Vehicles (ZEVs) and Near-Zero Emission Vehicles (NZEVs) in a manner that is feasible and does not impose unintended consequences on public water and wastewater agencies' ability to provide essential services, including during emergencies. We appreciate past consideration of ACWA commentary on topics including clarification of backup vehicle mileage, designated low population county requirements to accommodate special districts in overlapping counties, early action credit for purchasing ZEVs before 2024, and clarification of the exemption process.

The Draft ACF must provide certainty to public water and wastewater agencies to make the necessary purchases of ZEVs (and NZEVs) while minimizing the potential for adverse impacts in maintaining essential public health and safety services and the delivery of safe and affordable

water during normal operations and extended emergency conditions. Public water and wastewater agencies are essential public service providers that possess fleet vehicles with unique needs that must be reflected in the Draft ACF to prevent dire consequences that could result if our fleets were to be unable to accomplish core functions. Enabling the appropriate exemptions is necessary to ensure that the Draft ACF advances the State's goals but does not enforce compliance where infeasible. Thus, we offer the following comments:

1. Focus the Draft ACF on ZEVs (and NZEVs) that are "commercially available" for purchase

1A. Define "commercially available" within the Draft ACF.

Determination of what is "commercially available" remains unaddressed in the Draft ACF, even though the term is used ten times within the Draft ACF to justify purchasing ZEVs. An appropriate and sufficient definition of "commercially available" is essential for deeming that available vehicle models can be expected to meet our fleets' needs and reasonable vehicle procurement standards. Without agreement on what is "commercially available," we have great concern that new purchase requirements will be enforced when, in fact, "commercially available" vehicles do not exist to perform our essential public service fleet operations that Californians rely upon daily. As currently written, there is a disconnect between CARB staff's treatment of what is commercially available and what public water and wastewater agencies require to procure new vehicles that meet our fleets' needs. Draft ACF language suggests "commercially available" (as seen on Independent Statement of Reasons (ISOR) page 9, 70) simply equates to manufacturers taking orders for vehicle models that have been produced with at least one model delivered to a customer. The ISOR (H-1-40 of Appendix H-1) states that "It is necessary to apply limitations to the exemption for when ZEVs are commercially available with rated energy capacities that would meet most fleet needs."

Public water and wastewater agencies must have fleet vehicles that assuredly meet our stringent requirements and perform specialized functions to avoid dire situations in which public water and wastewater agencies cannot complete essential services. Purchasing a commercially available ZEV (or NZEV) should be fundamentally like purchasing an Internal Combustion Engine Vehicle (ICEV). Buyers must have certainty that the vehicle model they are required to buy is available in sufficient quantity for competitive bid purchase and from numerous vendors (to avoid market manipulation), can achieve similar or superior standards to the previous ICEV model, and be bought at a reasonable price (no more than 33% over the price of an equivalent ICEV). We offer the considerations listed below to define "commercially available" as a standard to be used when requiring fleets to purchase ZEVs as posed in the Draft ACF.

We recommend that "commercially available" for a ZEV (or NZEV through 2035), as it pertains to the Draft ACF purchase requirements, be included in Section 2013 State and Local Government Fleet Applicability, Definitions, and General Requirements to include the following, crucial considerations on page A-1-4:

- Available in sufficient supply to be purchased and received in an acceptable timeframe comparable to available ICEV.
- Available in sufficient quantities to provide for a competitive bidding environment and avoid price manipulation by vehicle manufacturers and dealers.

- Available from multiple reputable vehicle manufacturers as a certified zero-emission powertrain.
- Meets required specifications (e.g. duty cycle duration, elevation, climate, emergency response conditions, off-road capabilities) and exists in practice.
- Sold for no more than 33% over retail price for ICEVs of the same vehicle configuration.

1B. Develop a ZEV Availability List to affirm commercial availability of ZEVs and replace the current ZEV Unavailability List approach.

ACWA restates its previous recommendation to publish, update, and rely on a ZEV Availability List to inform fleets of ZEV models that are commercially available for purchase in place of the proposed Unavailability List of eligible ICEVs that can be purchased upon regulation implementation. Reliance on a ZEV Availability List would result in a clearer process to determine that a ZEV is in fact commercially available, and is thus required for purchase by fleets making new vehicle purchases. The currently proposed ZEV Unavailability List approach adds additional steps and uncertainty for fleet managers in making their fleet vehicle purchase decisions. The ZEV Unavailability List would only list ICEVs that are deemed eligible to purchase without the reference point of a list complete list of commercially available ZEVs.

A ZEV Availability List, which identifies all available ZEV models by manufacturer and with specifications, would better enable public water and wastewater agency fleet managers to explore their purchase options than the proposed ZEV Unavailability List. Using a ZEV Availability List enables fleet managers to compare what is commercially available for required fleet vehicle specifications to replace older vehicles with ones that match or exceed the performance of the previous vehicle. When the fleet manager has affirmation that a ZEV that meets the public water or wastewater system's unique needs is commercially available, they have greater awareness of what to expect when developing a Request for Proposal. If a ZEV is identified as commercially available, the fleet manager knows that they must either purchase a ZEV and not an ICEV, or show in a compelling way via exemption request that the commercially available ZEV does not meet their needs. The burden of filing an exemption request is on the fleet manager either way, and a ZEV Availability List will better enable CARB staff to review exemption requests based on a working list of what is available instead of a flood of exemption requests that result in additional hours of research to review and approve/deny.

ACWA requests that CARB use and expand Appendix J of the materials released on August 30 as a starting point of a ZEV Availability List with the additional criteria listed in below. The existing document is an early starting point and understandably requires continued input. Building this list is a long-term solution and valuable resource to communicating with California's fleets about available ZEVs as CARB works towards 2045 to electrify fleets everywhere feasible. Consider the below criteria[1]:

- Towing Capacity
- 4 Wheel Drive

[1] The listed criteria were compiled by ACWA member agency fleet managers in response to a request from CARB staff to discuss what specifications are essential when purchasing a new ZEV.

- Battery Life and Replaceability
- Wheelbase
- Competitive Bidding Environment/Production Capacity
- Underneath a Cost Premium
- PTO Cycle standard
- Payload Standard
- 1:1 Replacement
- Battery Replacement(s) for Vehicle Lifetime
- Availability of Remote Diesel Generator Charging Equipment (DC Fast Charging)

1C. Revise the ZEV Unavailability Exemption to include the ZEV Availability List and incorporate a technical infeasibility pathway.

If a fleet manager can document that a commercially available ZEV (or NZEV) does not meet their fleet needs, the fleet should be allowed to receive an exemption to purchase an ICEV following submission of an exemption request to the CARB Executive Officer. Where ZEVs are unable to meet public fleets' unique characteristics, including operating extended hours, in all weather, elevation, off-roading, and natural disaster conditions, vehicles should be exempt from the regulation until CARB identifies the vehicle as commercially available.

The proposed edits below can simplify implementation of the exemption by reducing the burden of assessing unwarranted requests for exemption. Numerous class 2b and 3 vehicles, including pickups, vans, box trucks, buses, or tractors, are available to purchase, but are not capable of providing the necessary vehicle specifications to meet water agency fleet needs. The submitted exemption request, using the ZEV Availability List, and incorporating a technical infeasibility pathway, would: describe why a ZEV is not suitable for the fleet's needs or accessible to the fleet owner, show that an ICEV is available and can meet the fleet's needs, and provide supporting documentation. This concept is like the technical infeasibility exemption process employed in the South Coast Air Quality Management District's Rule 1196, which uses a Technical Infeasibility Certification.

ACWA offers the suggested edits seen below to include our recommendations in 1C as part of the ZEV Unavailability Exemption found on page A-1-17 of the Public Fleets Provisions.

A-1-17

(d) ZEV Unavailability Exemption. A fleet owner may apply for this exemption if no ZEV (or NZEV) is "commercially available" at the time of purchase to meet the fleet's needs, or if the commercially available ZEVs (NZEVs) do not meet their fleet's specifications. The Executive Officer will maintain a list of vehicle configurations that are ~~eligible~~ commercially available to purchase as ZEV (or NZEV) Vehicles. ~~ICE vehicles when ZEVs or NZEVs are not available on the CARB Advanced Clean Fleets webpage.~~ The list will include all "commercially available" ZEVs (or NZEVs) including criteria that affirms the ZEVs (or NZEVs) are commercially available. ~~available ICE vehicles with a GVWR greater than 14,000 lbs. and will not include pickup trucks, two-axle buses, box trucks, vans, or any tractors.~~ Fleet owners may replace existing ICE vehicles with newly purchased ICEV vehicles whenever there is no "commercially available" ZEV on the list without submitting an exemption request. Additionally, this exemption may be used if the fleet

owner can provide documentation to affirm that commercially available ZEV models do not meet their specific fleet vehicle needs such that compliance would result in significant decreased fleet operation productivity. To use the exemption, fleet owners must: (1) Verify the vehicle in the weight class and configuration being purchased or replaced to comply with the regulation is not listed on the CARB Advanced Clean Fleets webpage as commercially ~~un~~available; (2) If commercially available ZEVs (or NZEVs) do not meet the fleet's needs, the fleet owner will submit additional documentation describing how the commercially available ZEVs or NZEVs do not meet their specific needs, and (3~~2~~) Comply with the reporting and recordkeeping requirements of sections 2013.2(g) and 2013.3(e).

1D. Establish an Independent Committee to affirm ZEVs (and NZEVs) as commercially available.

CARB should put together a committee of experts to evaluate the availability of ZEV vehicles based on knowledge of the industry and buyers' needs to fulfill fleet operations, including essential public service providers like water suppliers. Navigating California's fleets towards ZEVs, where feasible, is a difficult task that should build off of industry expertise to confidently affirm which ZEVs (and NZEVs) are commercially available for purchase. Working through the process of determining which vehicles are available for purchase and are suitable for fleets required to purchase new ZEVs should be handled by this committee to affirm where ZEVs are feasible for purchase to balance achieving the goals of this regulation with the equally important goal of maintaining essential public services like access to water and wastewater treatment. This committee could meet annually to discuss oncoming models to affirm viability across fleet sectors.

2. Expand the Grid Interconnection Exemption to consider real world conditions

ACWA restates the recommendation that CARB further consider grid reliability as a core feasibility element in development of this regulation. Public water and wastewater agencies must be able to charge fleet vehicles, as needed, to prepare for planned operations, and respond to extended emergency events. The potential that public water and wastewater agencies may be unable to charge fleet vehicles is unacceptable as it puts at risks the ability to fulfill essential public health and safety responsibilities. It is unreasonable for public water and wastewater agencies, and public fleets more broadly, to be required to purchase ZEVs as early as 2024 without assurance of the necessary charging infrastructure and energy supply to maintain or improve existing operations. State goals to reduce greenhouse gas emissions are essential for public health, but cannot supersede Californians' access to water and wastewater services, which are just as essential for public health.

The recent weeklong California heat wave was a reminder that CARB must further consider grid reliability and the need to procure the necessary megawatts to supply the oncoming electricity demand increase. One of the first statewide requests made ahead of the heat wave was for all ZEV users to refrain from charging during peak hours because the Governor's Office and supporting state agencies knew that the grid could not support forecasted electric load during the peak hours of the heat wave. This heat event is one occurrence of high strain on the grid but is a warning of more events to come. The recent Hurricane Ian also resulted in large areas of Florida being without power for extended periods of time, which reminds us that a similar

scenario could arise in California should we face flooding or earthquake events, in which electric fleets would be unable to provide essential water and wastewater public services. Load-serving entities (LSEs) in California do not yet know how much power will be needed to support oncoming electricity demand and may not know until fleets are required to purchase ZEVs to enable LSEs to begin to forecast demand, and thus they will not be able to satisfy the demand until the necessary infrastructure (both charging, and transmission and distribution upgrades) is deployed. All told, LSEs may need multiple years to realistically satisfy the infrastructure and power demands of all oncoming ZEV fleet vehicles.

Therefore, we propose that CARB amend the existing Infrastructure Delay Exemption (on pages A-1-13 and A-1-16 of the State and Local Government Agency Fleet Requirements) to further consider and address the concerns we have stated below. ACWA's recommendations can be implemented by increasing the length of time allowed in the proposed exemption. Water and wastewater agencies have engaged their LSEs and received responses that it could take multiple years to install the necessary charging infrastructure. Whereas CARB currently proposes a maximum 12-month delay, we propose that additional delay be allowed if fleet managers cannot be assured by their electric utility that the necessary power has been procured to satisfy energy demand.

A-1-13

(3) Infrastructure Construction Delay Extension. Fleet owners are excused from ~~taking immediate delivery of ordered~~ ordering ZEVs ~~for one year~~ when determining compliance with section 2013(d) if the criteria described in section 2013.1(c) are met.

A-1-16

(c) Infrastructure Construction Delay Extension. A fleet owner may apply for this extension if they experience construction and/or power supply delays beyond their control on a project to purchase ZEVs and install ZEV charging or fueling stations. The Executive Officer will grant a single extension per project to delay ~~the~~ vehicle purchase ~~delivery for one year~~ if they determine the fleet owner satisfies the criteria for the delay, based on the information submitted below and the exercise of good engineering judgment.

3. Other considerations for Draft ACF Implementation

3A. Revise Order Cancellation requirements.

ACWA encourages CARB to take a broader approach to order cancellation to provide guidance for when a manufacturer cancels a fleet's purchase order. Taking additional steps to guide purchase orders is essential to ensure that public water and wastewater fleets are aware of how to navigate compliance when their purchase orders are rescinded beyond their control. Fleets should be enabled to pivot nimbly when their purchase orders are delayed or canceled (due to high demand or manufacturer problems) towards alternative purchases to keep fleets on the path to complying with the proposed ACF.

3B. Reduce existing fleets reporting requirements to be an annual report submission

ACWA encourages reducing reporting requirements for ZEVs added to existing fleets to be an annual reporting requirement to remove higher administrative burdens on small public water and wastewater agencies. We offer this recommendation to account for the additional administrative requirement that may be passed on to already busy staff and to protect against mounting additional tasks that will need to be performed as noted in the above comments related to commercial availability and grid reliability. An annual report submission accounting for the changes to existing fleets will record the same desired information in fewer submissions to CARB, will provide a fuller picture of overall changes to existing fleets, and will result in reduced workload for public water and wastewater agencies as well as CARB staff.

4. Conclusion

We appreciate the opportunity to comment on this very important draft regulation. ACWA hopes to continue conversations with CARB staff to work through our submitted comments with additional detail in follow-up meetings with CARB Board Members and staff ahead of the Final Regulation. Please do not hesitate to contact me at nickb@acwa.com or (916) 441-4545, if you have any questions regarding ACWA's input. We look forward to future conversations with CARB staff, and CARB Board Members as the Draft ACF continues to be developed.

Sincerely,

Nicholas Blair

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Association of California Water Agencies

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