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Via Electronic Submission via the Workshop Comment Submittal Form and by email to zevfleet@arb.ca.gov

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

Re: Public Comments—CARB's 15-Day Rulemaking Package for Advanced Clean Fleets

Dear Chair Randolph:

On behalf of the Valero family of companies (representing operating subsidiaries of Valero Energy Corporation – collectively, “Valero”), I appreciate the opportunity to submit these comments in response to the 15-Day Rulemaking Package for California’s Advanced Clean Fleets (“ACF”) regulation.

In addition to being the nation’s largest independent refiner of petroleum fuels, Valero is one of the top producers of domestic biofuels. Valero was the first traditional petroleum refiner to enter large-scale ethanol production and is now the second largest ethanol producer in the U.S. Through our Diamond Green Diesel joint venture with Darling Ingredients, and following a recent expansion project to construct a new plant in Port Arthur, Texas, we are currently the leading renewable diesel producer in the world. Our Board recently approved a project to commission production of sustainable aviation fuel, and we are actively pursuing carbon sequestration opportunities in the United States that will substantially lower the carbon intensity of the ethanol we produce.

These comments supplement Valero’s previously submitted comments dated October 17, 2022 responsive to CARB’s initial proposal for the ACF Regulations. We respectfully request that both the remarks below and our previously submitted comments regarding the proposed ACF rule be included in the administrative record for this matter.

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Comments

a. Procedural Inadequacies Result in a Rule That Will Be Nearly Impossible to Implement.

As an initial matter, CARB has provided the absolute minimum amount of time granted by the statute for public review and comment of this package. The changes implemented in this 15-Day package are extensive; the Notice of Public Availability of Modified Text and Availability of Additional Documents (the “Notice”) is over 130 pages with four separate appendices, comprising a combined 153 pages. Extensive and substantive changes have occurred in CARB’s 15-day rulemaking package, several of the more significant being addressed here. However, the speed with which this regulation is being pushed through is staggering. The pace at which this significant regulatory development is being rushed through the process undermines CARB’s duty to meaningfully consider and address public input.

While Valero recognizes and appreciates the attempts by staff to streamline the language of the regulation, many of the revisions in this package highlight exactly how burdensome this regulation has become. For example, the term “exemption” appears over 400 times in the Notice while the term “extension” appears over 250 times. CARB has implemented so many intricate recordkeeping and reporting obligations for these exemptions and extensions that they will lead to a situation where the exception swallows the rule. The administrative burden for not only CARB but also for automakers, utilities, fleet owners, and operators is immense. It is clear from the over reliance on exemptions and exceptions that this rule is not yet ready for implementation and CARB staff have tacitly recognized what much of the industry has been saying for years – that forcing electrification of the transportation fleet in California through mandates is foolhardy and infeasible. But instead of slowing the pace and becoming more intentional and deliberative by addressing serious concerns with the feasibility of the proposed regulation, CARB has instead chosen to double down by accelerating the sales target by four years and creating a morass of red tape that will only serve to harm Californians. Instead, CARB should carefully consider the benefits that have already been achieved, and which are poised to accelerate as the LCFS is revised, based on utilizing the existing infrastructure along with renewable diesel to meet GHG emission reduction targets instead of placing its thumb on the scale for a singular technology that, as we have pointed out in our previously submitted comments, is not “zero emission” at all.

CARB is also relying on a woefully inadequate Cost and Benefits Analysis. The updated Cost and Benefits Analysis is only 14 pages long and devotes a mere seven pages to the cost analysis. This is concerning, given that the 15 Day Package accelerated the sales target by four model years. The consideration of IRA benefits does not address some of the critical concerns related to the Buy America provisions that are going to prove challenging to infrastructure buildout and development.¹ Further, the fuel cost projection provided has no basis, and only mentions in passing critical adjustments that purport to result in a \$21.5 billion decrease to the

¹<https://www.reuters.com/business/autos-transportation/ev-charger-makers-brace-slowdown-new-made-america-rules-kick-2023-03-21/>.

cost of the regulation. In support of these adjustments, CARB cites to a recently released California Energy Commission (“CEC”) Transportation Fuel Demand Forecast to establish that the costs of diesel, gasoline, natural gas, and hydrogen will increase between 2024 and 2050, while electricity will decrease. However, CARB has not provided any transparency into these numbers. This lack of transparency into the determination that the cost of the regulation will decrease leaves stakeholders unable to discern whether the four-year acceleration is even considered in the total cost of the regulation. The fact that the model year deadline has been accelerated by a whole four years cannot possibly lead to such a huge reduction in the cost of the regulation; this defies logic. Greater transparency and a more fulsome cost analysis is required by the California Health and Safety Code as well as by CEQA.

b. Acceleration of the 100 Percent Sales Target from MY 2040 to MY 2036 MY is Without Authority and Ignores Challenges Facing California.

CARB staff have justified the decision to move the 100 Percent Sales Target from 2040 to 2036 by relying on Board direction. However, neither staff nor the Board have analyzed whether they have the legal authority to put impose such a target in the first place, much less accelerate it.

Ultimately ACF would eliminate an entire industrial sector by displacing demand for oil production, petroleum pipelines and terminals, refineries, ethanol plants, renewable fuels production facilities, tanker trucks, oil change shops, and fuel service stations. Further, ACF would deprive fleet owners of the ability to use lawfully purchased and duly licensed equipment while it still remains operational. Such a taking impermissibly interferes with liberty interests protected under the California and U.S. Constitutions and may further deprive California businesses of vested rights.

The California Supreme Court has held that the “constitutional guaranties of liberty include the privilege of every citizen to freely select those tradesmen he desires to patronize.”² ACF will intrude on this liberty interest by preventing Californians from using ICEVs and effectively banning the infrastructure to support these vehicles. Under the California Constitution, substantive due process “requires legislation not to be ‘unreasonable arbitrary or capricious’ but to have ‘a real and substantial relation to the object sought to be attained.’”³ While California has an interest in limiting GHG emissions, ACF’s arbitrary and exclusive selection of ZEVs is neither necessary nor rationally tailored to achieve this goal.

c. New Requirement that New ICEVs be Certified to California Emissions Standards Only Further Disadvantages Other Fleets Not Subject to ACF.

The proposed requirement that new ICEVs be certified to California emission standards appears to naively assume that vehicle manufacturers will commit resources in designing, manufacturing, and distributing ICEVs designed to meet California emissions standards. Meanwhile, ACF purports to mandate 100% ZEV sales by 2036, meaning that the demand for

² *New Method Laundry Co. v. MacCann*, 174 Cal. 26, 32 (1916).

³ *Coleman v. Department of Personnel Administration*, 52 Cal.3d 1102, 1125 (1991) (internal citations omitted).

ICEVs will be largely dependent on unknown and unpredictable factors such as the future unavailability of ZEVs and of electrical infrastructure. In the face of such uncertainty, it is unclear why manufacturers would invest time and resources in producing equipment for which there may be limited or no demand. This will also further disadvantage fleets not subject to ACF, as the availability of new ICEVs that meet California emissions standards will likely be limited, if not non-existent. Then, by extension, ACF will affect all fleets in California and drive them all towards ZEVs instead of preserving a fleet owner's right to choose the technology that best fits the fleet's needs.

d. CARB's Site Electrification Delay Extension Demonstrates Awareness of the Issues Facing the California Grid but Vastly Underestimates Impacts from the Continued Electrification of the Transportation Sector.

The proposed ZEV Infrastructure Site Electrification Delay extension would allow up to five years due to delays in supplying necessary power to the site where the fleet owners will be charging ZEVs. However, the ACF rule does not operate in a vacuum, and CARB has not adequately considered whether the heavy load on the grid to power not only all fleet vehicles but also the light duty and medium duty vehicles traveling California roads each day will increase unreliability of the grid.

ZEV mandates like ACF present significant risks to grid reliability and the stability of the transportation sector. Transitioning truck stops into BEV charging hubs will require massive power, on a scale that has been likened to the power required by a small town^{4,5} or sports arena.⁶ The accelerated buildout of California's electrical grid will itself have public health consequences for local communities. California has 25,526 miles of high voltage transmission lines, and 239,557 miles of distribution lines⁷—enough to stretch from the Earth to the moon. Additional electrical infrastructure will need to be introduced into the environment as a result of increasing demand for reliable and renewable energy supplies under ACC II. The electrical buildout required will have considerable impacts on communities living in proximity because of visual intrusion (for overhead power lines), noise and a reduction of property values, along with potential health risks associated with the increased likelihood of wildfires and exposure to electromagnetic fields. Disadvantaged communities will bear the burden of living in proximity to California's expanding grid, containing high-voltage transmission and power lines as well as battery storage technologies prone to thermal runaway, which can trigger releases of toxic and explosive gasses while also starting fires that impact neighboring cells.

e. CARB Fails to Complete an Adequate Legal Analysis to Justify its Ultra Vires Actions.

⁴ See <https://www.autoblog.com/2022/11/26/electric-vehicle-charging-stations-could-use-as-much-power-as-a-small-town-by-2035-and-the-grid-isn-t-ready/>.

⁵ See <https://www.caranddriver.com/news/a41970523/truck-stops-energy-cost-electric-vehicles/>.

⁶ See <https://www.bloomberg.com/news/articles/2022-11-14/tesla-s-electric-semis-are-coming-and-trucks-stops-aren-t-ready>.

⁷ "Why not bury California's fire-prone power lines underground? The reason is sky high", Janel Wilson, - Oct. 11, 2019.

Under ZEV Milestones Option (Section 2015.2), a new requirement has been added stating that if a vehicle is operated in California at any time during a calendar year, it will be considered part of the California fleet for the entire calendar year for purposes of calculating the ZEV Fleet Milestones of section 2015.2(a) and (b). CARB's justification for this change is "to provide clear, simple criteria in determining the number of vehicles to be used in the ZEV Fleet Milestone Calculation. It is necessary to deem a vehicle that has operated in California at any time during a calendar year as part of the California fleet for the entire year to ensure that fleets cannot move vehicles in and out of their California fleet to artificially lower their fleet size for compliance with the ZEV Milestones Option."⁸ This is an extraordinary overreach that would have clear extraterritorial impacts on jurisdictions outside of California.

While there is a five-day pass option now available, this amount of time seems to be an arbitrary determination that is out of touch with the practical realities of interstate commerce. Roughly one-third of all containerized shipping goes through the San Pedro Bay Port Complex alone,⁹ and many of the goods shipped through California ports are distributed by trucks that operate throughout the United States. Many companies operating in California only do so for a handful of days out of the year (which is just as likely to exceed five days as not and aren't necessarily consecutive days, as the five-day pass requires), but are still based outside of the state and are registered, insured, and perhaps even fueled, outside the state. Yet CARB attempts, through this regulation, to dictate the makeup of fleets that literally pass through California. CARB has no authority to regulate interstate commerce in such a manner and should carefully consider the extraterritorial impacts and other Constitutional implications of such a provision, including but not limited to potential violations of the Dormant Commerce Clause, which prohibits state regulations that improperly discriminate against out-of-state commercial interests or that unduly burden interstate commerce.

Conclusion

California should pause regulatory development of this heavy-handed, complicated, and ultimately infeasible regulation. Instead, California should continue to support and foster technological innovations in the transportation sector by embracing technology-neutral, market-based approaches to decarbonization. Decarbonizing the transportation sector will require multiple technologies competing in an open market that rewards technologies based on emissions reductions and costs. Valero is prepared to work with CARB to help ensure its GHG reduction goals are achieved.

Sincerely,



Elizabeth Bourbon

⁸ Notice of Public Availability of Modified Text and Availability of Additional Documents, Advanced Clean Fleets Regulation, at p. 78-79.

⁹ <https://www.portoflosangeles.org/business/statistics/facts-and-figures>