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March 16, 2023

The Honorable Liane Randolph
Chair, California Air Resources Board
1001 I Street
Sacramento, CA 95811

RE: Proposed In-Use Locomotive Regulation

Dear Chair Randolph:

On behalf of the Peninsula Corridor Joint Powers Board (Caltrain), I would like to provide our comments on the latest draft of the Proposed In-Use Locomotive Regulation released by the California Air Resources Board (CARB) on March 1, 2023. We are deeply grateful for the attention and understanding of our region's CARB Board representative Director Davina Hurt and other Board members who raised concerns regarding the impacts of this regulation, as initially drafted, on the future of passenger rail and public transit in our state. We are also very appreciative of the multiple meetings and communications we have had with CARB staff to work to address issues of concern raised in our previous comments while preserving and strengthening environmental benefits.

Caltrain supports California's air quality goals and hopes to continue our partnership with CARB staff to help achieve them. As the first railroad in the American West to transition from diesel to electric service, we are excited to launch the state's first zero-emission electric multiple unit (EMU) trains into service in fall of 2024. The Caltrain Electrification Project recently closed its funding gap through federal funding included in the Consolidated Appropriations Act and an award from the state's Transit and Intercity Rail Capital Program, highlighting California's commitment to investing in zero emission rail technology and support for public transit.

In the current draft of the regulation, we are pleased to see, and are thankful for, the inclusion of the Alternative Fleet Milestone Option (AFMO) as a compliance pathway. This option allows operators to transition to a zero emission fleet over time in stages, while incentivizing early adoption of zero emission technology and enabling flexibility for fleets that are mid-transition to offset some of their remaining diesel technology as they move towards cleaner vehicles as quickly as possible. The stages of this option allow for mitigation of some of the uncertainty with purchasing requirements, federal regulations, manufacturing availability, and other factors that may impact the timelines for fleet transition.

We would like to provide the following recommendations to further support compliance and reduce uncertainty. These comments focus on the AFMO but would also be applicable to the Alternative Compliance Plan (ACP).

Approval of AFMO Compliance Obligations under Sections 2478.4 and Section 2478.5:

A locomotive operator applying to use the AFMO must apply to CARB at least 90 days prior to the requested start date of the AFMO. CARB is then required to approve or disapprove the AFMO application within 45 calendar days.

While we appreciate that the timeline for AFMO approval is reasonably brief, there is uncertainty with compliance and the timeline. We respectfully request that CARB also clarify that an operator that submits an AFMO in accordance with Section 2478.15 shall have no current or retroactive compliance obligations under Sections 2478.4 and 2478.5 while the AFMO application is being evaluated by CARB.

Without the certainty that compliance with the Spending Account requirements is not required during the application period, Caltrain would still need to plan for the financial impacts of the Spending Account well in advance in the event that the AFMO is not accepted which would be deleterious to budgeting efforts given the financial planning timelines of public agencies.

Appeal of AFMO Revocation:

An approved AFMO may be revoked at any time for failing to meet the requirements of the AFMO provisions, failing to submit required documentation, and other factors. CARB is required to provide notice of the revocation to the locomotive operator at least 30 days prior to the official revocation.

Given the magnitude of the impact of this regulation on public passenger rail transit agencies, we respectfully request that CARB establish an appeal process that permits a locomotive operator to present information to CARB that identifies valid reasons for the operator's failure to meet the requirements that served as the basis for AFMO revocation. An appeal process would benefit both CARB and the operators by setting clear expectations for how to proceed to enable compliance, especially for those agencies with less financial flexibility. We also recommend that CARB's revocation be stayed while an appeal is pending to avoid disruption.

Tracking of MWh Usage:

The AFMO provisions require locomotive operators to demonstrate their compliance with proposed regulation, as modified, through the tracking of MWh usage. Currently, the proposed regulation suggests, but does not clearly state, that locomotive operators should rely on the definition of "Usage" in Section 2478.83 to track MWh usage. This definition requires locomotive operators to report MWh usage from the meter and affords locomotive operators with the ability to calculate MWh using annual fuel consumption if the locomotive is not equipped with a functional MWh meter. Unfortunately, this lack of clarity in the proposed regulation, as modified, may lead to unnecessary confusion and misreporting as locomotive operators work to comply with the proposed regulation.

We respectfully request that CARB clarify that operators can submit a methodology to CARB to track MWh usage under the AFMO that includes but is not limited to fuel consumption, and any alternative methodologies for tracking and usage that are submitted by an operator and are approved by CARB.

Provision of State Incentives:

State funding and incentives that reduce the cost of zero-emission locomotives will continue to play an essential role in reducing the upfront capital cost of compliance with the regulation and reducing the proposed regulation's impacts on passenger rail service.

We respectfully request that CARB continue to pursue from the Administration and Legislature dedicated state funding to provide financial incentives to passenger and commuter rail agencies. These incentives should not only reduce capital costs associated with ZE deployments, including rolling stock and infrastructure costs, but also further ZE technology through the funding of pilot and demonstration projects of new ZE rail technology that has yet to be vetted by the Federal Railroad Administration for passenger use.

Pilot Projects:

Caltrain continues to request that CARB and the state invest in demonstration and pilot projects that will deliver near-term benefits to communities while enabling a broader industry transition to ZEV. Caltrain is interested in running a pilot with a battery-equipped electric multiple unit (BEMU) on the portion of its corridor yet to be electrified provided funding for a BEMU and demonstration project is secured prior to our option expiring in August of 2023. As we stated in our previous letter, Caltrain is available to work with CARB to move forward on enabling sufficient funding for pilots and ZEV transition for passenger rail agencies.

Technology Assessments:

Caltrain fully supports CARB's completion of technology assessments in 2027 and 2032. As specified in the staff report for the proposed regulation, this assessment would include an analysis of the progress made in ZE locomotive technologies and allow CARB the ability to determine if compliance dates need to be adjusted. As these assessments move forward, we urge CARB to ensure that they are as robust as possible and conducted with input from industry stakeholders and all relevant state and federal departments and agencies.

Again, we wish to thank the CARB Board and staff for their responsiveness to the many financial, regulatory and technical concerns we raised in our previous letter and public hearing comments. Caltrain is committed to transitioning to a zero emissions future starting with the EMUs expected to be in service in late 2024. Caltrain is available to meet with CARB staff to discuss these comments and looks forward to continuing to work together with CARB on these recommendations. Please contact Devon Ryan, Government and Community Affairs Officer, ryand@samtrans.com, (650) 730-6172, for any questions regarding this letter.

Sincerely,



Michelle Bouchard
Executive Director

cc: Members, California Air Resources Board
Dr. Steven Cliff, Executive Officer, California Air Resources Board
Heather Arias, Chief, Transportation and Toxics Division, California Air Resources Board
Jamie Callahan, Chief of Staff, Office of Chairwoman Liane Randolph, California Air Resources Board
Peninsula Corridor Joint Powers Board of Directors