

March 16, 2023

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

RE: Proposed In-Use Locomotive Regulation, 15-Day Changes

Chair Randolph:

On behalf of the California Transit Association, I write to you today to voice our support for the modified text of the Proposed In-Use Locomotive regulation, released by the California Air Resources Board (CARB) on March 1, 2023. Our support for the proposed regulation, as modified, reflects our satisfaction with, and great appreciation for, the introduction of several new provisions, which would create a third compliance pathway for locomotive operators – the “Alternative Fleet Milestone Option” (AFMO, Section 2478.8). This third compliance pathway seeks to directly account for the financial limitations of many of California’s intercity and commuter rail agencies as well as the technological limitations of current zero-emission locomotive technology we highlighted in our letter, dated November 3, 2022. We believe that these provisions would accelerate the deployment of zero-emission locomotives without undermining passenger rail service in the state. As you know, the provision of robust passenger rail service is critical to meeting the state’s ambitious climate change, air quality, mode shift, and equity objectives. Our support for the proposed regulation, as modified, and these provisions notwithstanding, we provide several recommendations in this letter that we believe would create additional certainty for locomotive operators and further support regulatory compliance with the AFMO provisions as well as agencies seeking approval of individual Alternative Compliance Plans (ACP, Section 2478.7). We look forward to continuing to work with CARB as the proposed regulation moves forward for adoption this spring and as the regulation is implemented.

The proposed regulation, as modified, provides locomotive operators with flexibility to submit an application for, and comply with, an AFMO instead of following the compliance obligations specified under the Spending Account (Section 2478.4) and the In-Use Operational requirements (Section 2478.5) or the Alternative Compliance Plan (Section 2478.7) provisions. A locomotive operator that submits an AFMO application must commit to, and following approval by CARB, demonstrate, conversion of their fleet to 100% Tier 4 locomotives (or cleaner) by 2035 and 100% ZE locomotives by 2047, with intermediate conversion targets at 2035 and 2042. Once approved, a locomotive operator’s AFMO is valid in perpetuity unless revoked. A locomotive operator that submits an ACP must commit to an equivalent to or greater reduction of PM, NOx, and GHG emissions than would have been achieved during the five-year

verification order under either Section 2478.4, Section 2478.5, or both. Below we present a series of recommendations for improving the implementation of the AFMO and ACP provisions.

Approval of AFMO and ACP/Compliance Obligations under Sections 2478.4 and Section 2478.5: A locomotive operator that wishes to use the AFMO must apply to CARB at least 90 days prior to the requested start date of the AFMO. A locomotive operation that wishes to use the ACP must apply to CARB at least 180 days prior to the requested start date of the ACP. CARB is required to approve or disapprove the AFMO or ACP application within 45 calendar days.

We appreciate that CARB has included a clear and brief timeline for approval or disapproval of an AFMO or ACP, but we respectfully request that CARB also clarify that a locomotive operator that submits an AFMO or ACP in accordance with Section 2478.15 shall have no current or retroactive compliance obligations under Sections 2478.4 and 2478.5 while the AFMO or ACP application is being evaluated by CARB.

This recommendation seeks to address the financial impacts of the Spending Account requirements that would otherwise exist under the regulation, and which served as the primary basis for our concerns with the proposed regulation, as introduced.

Appeal of AFMO or ACP Revocation: An approved AFMO or ACP may be revoked at any time by the Executive Officer for reasons that include: failure to meet the requirements of the AFMO or ACP provisions; failure to submit documentation as required; the locomotive operator's failure to obtain approval of a detailed timeline report by no later than one year after the submission deadline; the locomotive operator's failure to meet the milestone dates set forth in the detailed timeline report, if no extension is obtained; or the locomotive operator fails to meet other application requirements in the regulation. CARB is required to provide notice of the revocation to the locomotive operator at least 30 days prior to the official revocation.

We respectfully request that CARB expand on these provisions by also including provisions establishing an appeals process that permits the locomotive operator to present information to CARB that identifies valid reasons for the locomotive operator's failure to meet the requirements, as to be specified, that would otherwise serve as the basis for revocation of an AFMO or ACP. These provisions should allow for a clear process for this appeal to be considered by the Executive Officer and granted, if specified conditions are met.

Tracking of MWh Usage: The AFMO and ACP provisions require locomotive operators to demonstrate their compliance with proposed regulation, as modified, through the tracking of MWh usage. As drafted, 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 the methodology that should be used to track MWh usage under the AFMO and ACP. We also urge CARB to recognize that the technological and human resource capacity of each locomotive operator differs

significantly and provide a path toward locomotive operators and CARB identifying an alternative and mutually agreeable methodology for tracking and reporting MWh usage.

Provision of State Incentives: State incentives that reduce the cost of zero-emission locomotives will continue to play an essential role in reducing the upfront capital cost associated with compliance with the regulation and reducing the proposed regulation's impacts to 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 be oriented toward reducing the full incremental capital costs associated with ZE deployments, inclusive of rolling stock and infrastructure costs.

Finally, we wish to note that the Association 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. This technology assessment would also provide CARB with the ability to determine if compliance dates need to be adjusted. As these assessments moves 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.

In submitting this letter, we sincerely thank CARB for its responsiveness to the significant financial and technical concerns we raised in our previous letter, dated November 3, in response to the then-proposed regulation and at the CARB board meeting on November 17. If you have any questions regarding this letter, please contact me at michael@caltransit.org or (916)-446-4656 x1034.

Sincerely,



Michael Pimentel
Executive Director

cc: Members, California Air Resources Board
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