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Re: Northern California Power Agency's Comments on California Air Resources Board's Advanced Clean Fleets Staff Draft Regulation

The Northern California Power Agency ("NCPA") respectfully submits these comments to the California Air Resources Board ("CARB") regarding the September 9, 2021 Public Workshop on Draft Regulatory Language and Updated Cost Assumptions for the Advanced Clean Fleets ("ACF") Regulation (September 9 Workshop), the draft regulatory language for the ACF regulation, and the Draft Advanced Clean Fleets Total Cost of Ownership Discussion Document.

NCPA was established in 1968 by a consortium of locally owned electric utilities to make joint investments in energy resources that would ensure an affordable, reliable, and clean supply of electricity for customers in its member communities. NCPA members include municipalities, a rural electric cooperative, and other publicly owned entities for which the not-for-profit agency provides such services as the generation, purchase, aggregation, scheduling, and management of electrical energy. NCPA Members are: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Shasta Lake, and Ukiah, Plumas-Sierra Rural Electric Cooperative, Port of Oakland, San Francisco Bay Area Rapid Transit District, and Truckee Donner Public Utility District – collectively serving nearly 700,000 electric consumers in Central and Northern California.

NCPA supports CARB's goal of diversifying California's transportation fuels and significantly reducing greenhouse gas ("GHG") emissions from the transportation sector in furtherance of the state's climate change goals. NCPA Members are committed to supporting the needs of our communities as California transitions to zero-emission vehicles ("ZEV"), and decarbonizing other sectors of the economy.

However, this regulatory proposal will have a considerable impact on public fleets, and in particular, public fleets serving electric utilities; as such, CARB must ensure that the regulation does not endanger the critical role that utility public fleets play in ensuring safe and reliable electricity services.

I. INTRODUCTION

NCPA and its member agencies would be subject to the proposed Public Fleets requirements in the ACF regulation. NCPA is pleased that CARB has convened a Public Fleets Workgroup, as it will allow for greater discussion on the diverse nature of public fleets across the state, and looks forward to participating in those discussions with CARB and other stakeholders. This workgroup is necessary because public fleets are varied; they include commuter vehicles used by public agency personnel to travel to meetings and inspect urban infrastructure; fire and police vehicles needed to ensure public safety; heavy-duty garbage trucks; and vehicles used to maintain and serve public agency utilities, such as electricity, gas, water, and sewer.

As set forth in the current staff proposal, the Public Fleets provisions appear to be drafted without regard or understanding of the unique role that public owned utilities (POUs) serve in providing safe and reliable electricity for public agencies, and the vehicles used by those utilities. Public fleet utility vehicles are more analogous to emergency response vehicles than the typical public fleet, yet are not afforded any of the same exemptions. NCPA offers the following comments in the interest of facilitating a better understanding of the importance of distinguishing between public fleets generally and public fleets' utility vehicles with the objective of crafting an AFC regulation that is reasonable and workable, and that POU public fleets can comply with without compromising the integrity of their electric utility infrastructure or the safety of California's residents and businesses.

It is axiomatic that meeting California's strong climate objectives and aggressive vehicle electrification goals will require a safe and reliable electric grid. As the state moves to electrify the transportation sector, we must ensure that the vehicles that are used by electric utilities to maintain their infrastructure and respond to emergencies are available at all times. The availability of these vehicles is essential for public health and safety, and CARB must ensure that the ACF regulations do not compromise the ability of public fleets to maintain this critical infrastructure and respond to emergencies. The AFC regulation must reflect the realistic and feasible availability of the medium and heavy duty (MHD) vehicles and specialty vehicles that are needed for POUs. Imposing an arbitrary deadline and reach goal in this instance is problematic and could endanger public safety.

II. MEANINGFUL EXEMPTIONS MUST BE AVAILABLE FOR PUBLIC FLEET VEHICLES USED FOR ELECTRIC UTILITY OPERATIONS

As more fully set forth herein, there are myriad reasons why meaningful public fleet exemptions provisions must be included in the ACF regulation. As such, NCPA urges CARB to make the suggested revisions to Section 95693.2 Public Fleet Exemptions.

A. Public Fleet Vehicles Used for Electric Utilities Serve a Critical Function

Public fleets used to support utilities are critically important to ensuring the safety and welfare of the state's residents and businesses. This is especially true for electric publicly owned utilities (POUs), for which other vital utility services are dependent. A meaningful exemption process is warranted for all of the following reasons:

1. Public Safety and Grid Reliability Must be Paramount: Public safety must be a priority. It is imperative that the public fleets serving electric utilities be available to safely maintain and promptly respond to needed repairs of the electricity infrastructure. However, public safety goes beyond ensuring that downed power lines are repaired and that infrastructure is working properly. Electricity service is essential for the health and well-being of California's residents and businesses; utilities must be able to respond to any outage as quickly as possible so that the lights can remain on, homes can be heated or cooled as necessary, medical equipment can be properly operated, and water can be pumped from wells. It is important to keep in mind that the need for infrastructure repair and outage response are not necessarily tied to emergency situations or natural disasters. Outages can occur at any time for many reasons over vast areas. Fuel diversification is critical, as utility vehicles must be able to reach the location of an outage or required maintenance without undue delay, and without concerns about an outage impacting the ability to recharge the response vehicle at the job location. NCPA urges CARB to recognize the need to ensure that measures and mandates designed to meet our decarbonization goals do not compromise public safety.
2. Utility Fleet Size Will Impact Ability to Safely Comply: NCPA understands that public fleets may be comprised of hundreds of vehicles. However, that is not always the case, and for smaller public fleets that support electric utilities, the ACF requirement presents additional challenges with adverse impacts on public safety. For example, smaller utility fleets are more likely to have a larger number of vehicles – up to 100% - designated for deployment in the event of an emergency. As such, as drafted, the Emergency Vehicle Exemption would be of no value, as it would not be possible to have a fleet comprised 75% of ZEVs, let alone 75% of any specific body type. Additionally, fleet vehicles for smaller utilities often see heavier duty cycles. These vehicles will be called upon to perform more functions, making the utilization of EV-only technologies more challenging. NCPA encourages CARB to consider flexible exemption provisions for smaller public fleets.
3. Storing and Deploying Electric Utility Emergency Response Vehicles Can Present Recharging Challenges: Fleet vehicles used by the electric utility are going to be deployed to respond to emergencies, such as the aftermath of earthquakes, unexpected flooding, wildfires, and public safety power shut-offs. These vehicles may be dispatched to cover incidents that occur away from where the vehicles are stored and charged. Vehicle miles traveled to reach critical locations will deplete the amount of power the vehicle then has to carry out the necessary repairs or restoration activities. During such events, recharging electric vehicles will likely not be possible in close proximity to where they are working due to the emergency outage at issue. Likewise, electric utility vehicles may be located at remote locations around critical infrastructure. In the event of an outage in those areas, the vehicles would be completely unable to recharge, thus impacting the ability of the utility to respond to an emergency and restore power.
4. Service Territory and Terrain will Impact the Ability of Public Fleets to Safely Comply: California is a geographically diverse state, and so too are the public agencies that operate electric utilities. For utilities in urban areas, vehicle range and charging infrastructure do not present a particular challenge for implementation of the ACF mandate when looking at day-to-day activities. However, many of NCPA's member utilities and generating facilities, for example, operate in remote parts of the state and have utility distribution infrastructure

that covers long distances in unpopulated areas. Utilities operating in more remote areas and in rugged terrain face additional challenges when electrifying their utility vehicles. This is because job sites will occur at more remote locations without any charging opportunities nearby. Utilities in remote parts of the state or those with larger and less populated service territories also face extra challenges associated with vehicle charging and range constraints, which are even more problematic when responding to an emergency that resulted in an outage.

5. ZEVs Must Meet Utility Needs: Payload and capabilities of ZEVs for utility operations must match existing vehicles. The ZEVs and NZEVs must be able to provide all of the same functionality as an internal combustion engine (ICE) vehicle in order to ensure that the ability of the utility to carry out necessary repairs, maintenance, and restoration is not compromised. Specialty vehicles are required for utility operations and maintenance, but not all utilities will need the same fleets. It is imperative that the regulation recognize that it is the individual utility that must make the determination of the appropriate vehicles to support their utilities and needs. As noted, California is geographically diverse; geography, altitude, and temperature all factor into a utility's consideration of the appropriate vehicles. While vehicle range is an important consideration, it is not the sole – nor most important – factor. Vehicle range is irrelevant if the vehicle itself is incapable of carrying out the necessary tasks once it arrives at the needed location. Manufacturers must work to ensure that MHD ZEVs are capable of supporting bucket trucks, digger derricks, hydro excavators, dump trucks, material handling trucks, cranes, and more. The main use of power is to operate the power take-off (PTO) on the utility vehicles, which may need to run continuously for up to 24 or 36 hours in the event of an emergency response. There is no way for the utilities to re-charge the vehicle on-site once the auxiliary systems drain the battery, rendering the vehicle inoperable and potentially compromising public safety. Similarly, difficult terrain in certain service territories places greater load on the drivetrain and significantly impacts the advertised/rated ranges of the vehicle. This is further exaggerated by the need for these vehicles to travel un-improved roads and during significant weather events (e.g., snow).¹
6. Mutual Aid: Unfortunately, California utilities have had to call on mutual assistance from other jurisdictions more often than they would like over the past few years. Fortunately, utilities have been able to work together and provide this mutual aid when needed. While California's wildfires are the most high-profile cause of outages and the need for utility infrastructure repairs, wildfires are not the sole reason utilities may need to call on mutual assistance. Mutual aid is critical to restoring power after any major event, including earthquakes, and also in instances not caused by Mother Nature. ZEVs will have an impact on the ability of public fleets to receive and provide mutual aid. Not only will the range of the ZEVs limit the distance that vehicles can travel to provide or receive aid, but limitations on refueling infrastructure en-route and at the job site will also impede the ability of utilities to offer aid. Many times, outages occur over vast areas, and restoration efforts require extensive travel to assess and repair infrastructure, inspect power lines and infrastructure, and ensure timely and safe restoration. Increasing the state's ZEV and alternative fuels infrastructure will greatly facilitate these efforts. However, improved infrastructure would

¹ NCPA notes that while equipment dedicated to snow removal is subject to an exemption, public fleet utility vehicles operating in those same climes face identical challenges. (Section 95693(c)(2)).

still not address the constraints resulting from instances where utility repairs must take place directly in an area experiencing an outage.

B. The “Emergency Response” Exemption is Unworkable as Drafted

As clearly demonstrated above, an emergency response exemption is vital to the ACF regulation, and NCPA appreciates CARB’s recognition of the need to exempt certain vehicles from the purchase mandate. Utilities are on the frontline when natural disasters occur and when the power is out, and must be able to respond in such situations – whether or not there is EV charging available in the impacted area. While the proposed language specifically recognizes the need for an exemption when “vehicles will be designated to provide emergency response in supporting electricity, natural gas, water, or wastewater services across California or in other states,” as drafted the provisions of section 95693.2 demonstrate a fundamental misunderstanding of the needs of public fleets to support these utility services, and nullifies any relief that provision could provide.

- 75% Threshold for Body Type is Unworkable: Requiring that 75% of a specific vehicle body type already be ZEV before an exemption can be granted is an unnecessary limitation and renders the exemption difficult – or impossible – to meet for those body types that are most needed for emergency response.² This restriction is unworkable for several reasons:
 - The regulatory requirement is based on the number of vehicle purchases in a single calendar year without regard to the actual needs of the public fleet. If the public agency is seeking to purchase vehicles that are needed for emergency response, the regulation must provide an avenue for utilities to make the necessary purchases in that year. Reaching 75% ZEV or NZEV in some body types will naturally take more than a decade, rendering this exemption meaningless in the first years of the regulatory requirements.
 - For some body types there may only be a small number (i.e., 1-3) of that type of vehicle in the public fleet, making it impossible to meet the 75% threshold and qualify for the exemption.
 - Even in instances where there are multiple vehicles of the same body type in a public fleet, utilities may need more than 25% of a single body type for emergency response. When responding to an emergency, especially a significant event like an earthquake, wildfire, or ice-storm – all of which have occurred, are occurring, or are forecasted to imminently occur – 100% of the public fleets may be called upon as utility emergency response vehicles. This is true whether the public fleet is large or small. In particular, smaller public fleets, fleets located in more remote areas or that cover larger service territories, or jurisdictions in Tier 2 and Tier 3 wildfire areas, are especially likely to require closer to 100% of their fleet to be used for utility operations at any time. Public agencies need to be able to make a determination of its emergency response vehicle needs.
- Existing Charging and Fueling Infrastructure is Moot During an Emergency: As proposed, section 95693.2 would require the public agency to demonstrate that “necessary publicly accessible charging or hydrogen fueling infrastructure or mobile fueling options are not readily available in

² Proposed AFC regulation section 95693.2(a)(1).

the areas to be served in emergency response.”³ This requirement makes no sense in the context of an emergency response. In the event of an emergency, it is highly likely that the utility’s fleet will be responding to an outage, meaning that even if publicly accessible charging is available in those areas, such charging is almost guaranteed to be *unavailable* for the duration of the time the fleet vehicles will be needed to restore power. Increased access to EV charging and further developed EV and alternate fuel infrastructure are imperative to aiding the state’s clean energy transition and ensuring greater electrification. However, the development of that infrastructure cannot be used to obfuscate the need for emergency response vehicles that are not dependent on EV charging.

- Public Agencies Must Have the Sole Discretion to Determine their Specific Fleet Needs: In order to obtain the exemption, the proposed regulation requires the public agency’s governing body to explain the need for the emergency exemption. The POU fleets are comprised of vehicles that meet their specific needs, and it is likely that each explanation will be unique. It is imperative that CARB recognize the public agency’s discretion to make a determination of the type and number of emergency response vehicles needed, and not have that determination constrained by arbitrary designations of vehicle availability or caps on vehicle type that have no relation to actual utility or fleet operations. As mentioned above, smaller public fleets and more remote public fleets in particular rely on a higher percentage of fleet vehicles for emergency response. To address these shortcomings, and provide a meaningful exemption provision, NCPA recommends changes to the Exemption for Emergency Response in Section 95693.2 (a), as shown in Attachment A.

C. An Exemption Specific to Public Fleet Electric Utility Vehicles May be Warranted

The ACF regulation must recognize the significant role that electric utility public fleets play in ensuring a safe and reliable electric grid. Vehicles used by these utilities are imperative for ensuring the necessary maintenance of the utility’s electric distribution infrastructure, and even more critically, responding to emergencies and electric outages. As noted above, however, not all outages are going to be emergencies, and not all public fleets are similarly situated with regard to their service territory, fleet needs, or utility infrastructure. If CARB still believes that the refinements to section 95693.2 discussed above are not warranted, NCPA urges CARB to recognize a specific exemption for public fleet electric utility vehicles.

Analogous to the provisions of proposed section 95693(c), a new sub-section to 95693.2 should be added that includes an exemption for public fleet vehicles used for repairing damaged lighting or electrical distribution equipment and infrastructure, or serving electric generation facilities. As noted above, electric utility public fleets are unique in many ways, and face special challenges when meeting ZEV mandates while simultaneously ensuring that the electric grid remains safe and reliable. These circumstances warrant the same exemptions for electric utility emergency vehicles owned by POU’s as the proposed AFC regulation would provide to vehicles owned by the state, a bridge, or highway

³ Proposed AFC regulation section 95693.2(a)(2).

district.⁴ Exempting these utility vehicles is consistent with the rationale for exempting emergency vehicles and dedicated snow-removal vehicles, which are already included in section 95693(c).

D. Exemptions Should Address Situations Beyond the Public Fleet's Control

NCPA urges CARB to work closely with stakeholders and manufacturers to understand the real-world limitations on development, deployment, and testing of public fleet vehicles serving POU's. This understanding is imperative to developing a purchase mandate and implementation timeline that is feasible and realistic, and that does not compromise public safety. NCPA looks forward to discussing whether the implementation dates for utility vehicles are viable during the upcoming workgroup meeting.

However, irrespective of the implementation dates, the purchase mandate can only be effective if the public agency has the ability to make the necessary purchases. That means that the ZEVs and NZEVs of the body type needed by the agency are available when the agency needs them, and that the vendors that provide these vehicles are reliable. NCPA is optimistic that through incentives and public/private partnerships the availability of MHD ZEVs and NZEVs will increase in the coming years. However, if for some reason that does not occur on the timeline needed to meet the regulatory requirements, there must be an exemption to the requirements of section 95693.1(a)(1) for clear situations beyond a public agencies' control. Failure to recognize the need for such an exemption endangers public safety and could hobble utility ability to support the grid's needs. Public agencies do not have the option to skip purchasing a replacement vehicle because there is no available ZEV, or there is a significant manufacturer delay in the availability of the necessary replacement vehicle. Utilities in particular must ensure that they have an operational fleet that is able to ensure reliable electricity services, which is especially important as we work to electrify the transportation sector. The following should be recognized as justification for an exemption:

- Exemption for ZEV Unavailability from Qualified Bidder: A public fleet must be able to receive an exemption for when ZEVs or NZEVs are not available for a particular application or cannot meet a fleet's operational needs. Public fleets are, by definition, purchases by public agencies charged with overseeing the responsible expenditure of public funds. The purchase requirements for public agencies must acknowledge and accommodate this heightened responsibility and the corresponding public agency procurement process. The specific bid requirements, standards, warranties, financial worthiness, and vehicles specifications must be determined by the public agency. The ACF regulation must accommodate situations wherein the public fleet does not receive responsive bids from responsible suppliers.
- Exemption for Unavailability of Required Vehicles: The procurement mandate, as drafted, does not take into account the needs of the public fleet. The draft regulations require 50% of public fleet purchases to be ZEV or NZEV starting on January 1, 2024, without any distinction as to what type of vehicle class or body type may need to be replaced at that time. While ZEV and NZEV options continue to expand for MHD trucks, CARB has recognized that certain types of vehicles are less likely to be available until later in the decade. Further

⁴ See Vehicle Code section 165(c).

complicating the ability to meet these requirements is the fact that even once the vehicles are available, we know that the number of available vehicles will be limited.

- Public Fleet Procurement Mandate Must Recognize Vehicle Availability: Specialty vehicles, custom-built vehicles, and low-mileage vehicles are not recognized for exemptions (but are recognized for high-priority fleets). Specialty vehicles or customized vehicles may need to be replaced prior to the availability of these vehicles from manufacturers. Both the proposed provisions for high priority fleets and the Advanced Clean Trucks (ACT) regulation recognize that these types of vehicles are not likely to be available on the market for several years, yet as proposed, the public fleets may be required to purchase a specialty or custom-built ZEV or NZEV starting in 2024. At a minimum, the Section 95693.1(a)(1) mandate should include the same recognition for public fleets as for high-priority fleets
- ACF Regulation Must Recognize Manufacturer Delays: Manufacturer delays are not recognized as a cause for exemption, despite being outside of a public fleets' control. While manufacturers may be optimistic about their ability to provide new vehicles and necessary technologies, there are myriad reasons why vehicles may not be timely available. This includes supply chain issues, delays in manufacturing timeline, or simply demand may exceed supply. Public agencies are not able to control any of these factors, regardless of how diligently the bidding and contracting process. Indeed, there is already anecdotal evidence that these delays are occurring even within the limited fleet of available vehicles. The AFC regulation should allow for exemptions from timely compliance when a manufacturer is not able to meet the contractual delivery requirements.

The ACF regulation must include provisions exempting public fleets from the mandate when compliance is not possible due to reasons that are beyond the control of the public agency. NCPA recommends inclusion of such an exemption in section 95693.2, as shown in Attachment A.

III. Low Population Counties

NCPA supports and appreciates the objective of the draft regulation's three-year extension for low-population counties, which would include both NCPA generating facilities as well as several NCPA Member Agencies. However, as drafted, the proposed text would not provide the intended protection to all similarly situated public fleets. This is because the requirement that a public fleet be located "solely" within low population counties does not take into account the fact that a utility service territory is not necessarily consistent with the geographic boundaries of a specific county. Such is the case for Truckee Donner Public Utility District (PUD).

Truckee Donner PUD is a small POU providing electricity for the City of Truckee. Truckee PUD's service territory is 98% within Nevada County, a designated "low population county." However, the remaining 2% of its territory covers a remote and rural area of neighboring Placer County, which is not considered "low population" on a county level. As such, despite the fact that the totality of Truckee Donner PUD's *service territory* is in "low population" areas, because just 2% of that service territory is in a county that is not low-population would preclude Truckee Donner PUD from utilizing this exemption. To account for this unique situation, NCPA recommends that section 95693.1(a)(1)(B) be modified to

allow a public agency whose jurisdiction is at least 90% in a designated low population county to qualify for the deferred purchase mandate, as set forth in Attachment A, attached.

Additionally, NCPA urges CARB to create a meaningful implementation timeline for those public fleets located solely or primarily in low-population counties. These utilities require a slower ramp-up to meet the mandate, rather than simply an exemption from meeting the interim requirement. Due to their population demographic and expected EV infrastructure build-out, merely deferring the full compliance requirement does not provide adequate accommodations. These public fleets should be allowed more time to benefit from the training and lessons learned from more populated areas, and to allow for greater infrastructure development. To ensure measured and successful implementation of the ZEV fleets, the implementation for low population counties should include the same ramping requirements as applied to public fleets in larger counties; a 50% mandate by 2027 and 100% by 2030. As such, NCPA recommends revisions to section 95693.1 as shown in Attachment A.

IV. Near Zero Emission Vehicles

In instances where ZEVs are not available, NCPA appreciates that the proposed regulatory language allows for the purchase of NZEVs. NCPA provide the following proposed refinements to the NZEV provisions as set forth below:

- Definition of NZEV. The definition for NZEV in section 95693 (b)(18) should be expanded to include other fuel technologies that significantly reduce vehicle emissions, including vehicles that utilize renewable fuels and hybrid vehicles with internal combustion engines and electric PTO. CARB should facilitate fuel diversity and not preclude the ability of existing and emerging technologies that result in overall emissions reductions to be employed.
- Consistent Treatment of NZEVs. NZEVs purchases are recognized only when no responsive ZEV bids are received. The draft requirements for public fleets specify that NZEV purchases will be counted as ZEVs through January 1, 2035, but only if a public bid is issued to purchase ZEVs and NZEVs but no responsive bids were received for ZEVs⁵. This restriction on public fleets is inconsistent with the proposed requirements for high-priority private fleets, which allows either ZEVs or NZEVs (through the 2035 model year) to satisfy their ZEV fleet rule.⁶ This requirement is also unnecessarily more stringent than the requirements for high priority fleets. The draft regulatory language in section 95693.1 (a)(1)(C) should be amended to remove this barrier, as shown in Attachment A.

⁵ Proposed AFC regulation section 95693.1 (a)(1)(C)

⁶ Proposed AFC regulation section 95692 (b)(9); section 95692(d)

V. Reporting & Enforcement

Reporting Deadline for Low Population Counties. The initial report to CARB should not be due for fleets located in low population counties until March 1, 2027. Providing fleet information three years in advance of the regulatory requirements is an unnecessary reporting burden.

Reporting Requirements. The following reporting items should only be collected if available, as historic records may not be available for older fleet vehicles, or complete information may not yet be available for newly purchased vehicles.

- Date bid awarded
- Date vehicle purchase was made
- Date vehicle was placed in service

Public Fleets Enforcement of Requirements. The “Right of Entry” should be restricted to business hours. Additionally, audit requests for vehicle records should be made at least five business days in advance of an audit. Additional time would be needed for the purposes of inspecting vehicles.

VI. Jurisdiction

The proposed regulation’s use of the terms public agency and fleet owner need to be reconciled, and ensure that the applicability of the various requirements is unambiguous. The language should also clarify the manner in which the public agency defines its fleet. NCPA looks forward to addressing this further during the upcoming workgroup meeting.

VII. Cost Considerations.

The Draft Cost Paper looks at the cost of ownership of electric vehicles versus traditional vehicles, and surmises that “the results show that battery-electric vehicles appear cost competitive with the established combustion technologies by 2025 in a variety of use cases. Significant savings are shown for battery-electric in the walk-in van, refuse truck, and day cab categories, even in the early years. Fuel cell electric vehicles also appear competitive with combustion-powered technologies in the 2025 to 2030 timeframe depending on the vehicle type. Despite the higher upfront costs associated with vehicle costs and infrastructure, cost savings from lower fuel costs and LCFS revenue result in a positive total cost of ownership (TCO). The TCO for ZEVs is expected to improve over time as costs continue to decline.”⁷ What the cost analysis does not look at, however, is the impact that the Public Fleet requirement would have on the cost of electricity for POUs, nor how this would impact the affordability of electricity. While the initial assessment concludes that these vehicles “appear” cost competitive by 2025, the analysis does not look at the specific specialty vehicles that will be needed by public fleets that have electric utilities. Nor does the analysis address how the admittedly higher up-front costs will be addressed in electric utility rates, nor how those higher costs will impact the affordability of electric service. NCPA anticipates that these costs will have a disproportionate impact on the affordability of

⁷ Draft AFC Cost of Ownership Discussion Document, p. 4.

electricity in the service territories of its smaller members and those members with lower income communities.

Publicly-owned electric utility rates are set by the local governing board, and POU's may have limited abilities to raise rates and adjust their budgets through local government approval processes, especially for the first years of the proposed ACF requirements. As public entities, there is often a thorough public process to approve changes to rates and/or fees. The Draft Cost Paper acknowledges the increased up-front costs will result in a significant premium for purchasing ZEVs. Public agencies will also incur costs occasioned with the need to significantly modify facility infrastructure and fleet yards to ensure the necessary fueling infrastructure is in place. All of these costs will ultimately be borne by utility customers.

The Draft Cost Paper recognizes that "how fleets operate their vehicles affects many operating characteristics and varies between fleets."⁸ However, the analysis does not specifically address the duty-cycle for public fleet electric utility vehicles. NCPA observes that the duty-cycles for some public fleet vehicles will be less conducive, and therefore less cost-effective for ZEV replacement. While the Draft Cost Paper notes that the SRIA will model duty cycles, at this time there is not yet enough information to understand the total cost of ownership for ZEV specialty vehicles, or the impact that those costs will have on electric utility rates for POU fleets

VIII. Conclusion

NCPA appreciates your consideration of these comments and your willingness to work collaboratively toward ensuring that the proposed rule supports a reliable and affordable electric system. Please contact me at (916)781-4293 or emily.lemei@ncpa.com if you have any questions.

Respectfully submitted,



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⁸ Draft AFC Cost of Ownership Discussion Document, p. 10.

Attachment A – NCPA Revisions to Draft Regulatory Language
Changes shown in bold

Section 95693. Public Fleets Applicability, Definitions, and General Requirements.

(a) *Scope and Applicability.* Section 95693 applies to any public agency that owns, leases, or operates a vehicle with manufacturer's gross vehicle weight rating (GVWR) greater than 8,500 pounds as defined in section 95693(b)(26). This section does not apply to federal fleets nor vehicles described in section 95693(c).

(b) *Definitions.* For the purposes of this regulation, the following definitions apply:

- (1) "Authorized dealer" means an independent sales, service, or repair facility that is recognized by a motor vehicle manufacturer as a sales representative or is authorized and capable of performing repairs to factory specifications, including warranty repair work.
- (2) "CARB" means the California Air Resources Board.
- (3) "Class 2b-3" means a vehicle with a GVWR that is 8,501 pounds up to 14,000 pounds.
- (4) "Class 4-6" means a vehicle with a GVWR that is 14,001 pounds up to 26,000 pounds.
- (5) "Class 7-8" means a vehicle with a GVWR that is 26,001 pounds and higher.
- (6) "Common ownership or control" for a public fleet means being owned, dispatched, or managed day-to-day by the same person or entity. Vehicles managed by the same directors, officers, or managers, are considered to be under common ownership or control even if their title is held by different entities or they have different taxpayer identification numbers. Common ownership or control of a government vehicle shall be the primary responsibility of the governmental agency that is directly responsible for its day-to-day operational control.
- (7) "Dedicated snow removal vehicle" means a vehicle that has permanently affixed snow removal equipment such as a snow blower or auger, and is operated exclusively to remove snow from public roads, private roads, or other paths to allow on-road vehicle access.
- (8) "Designated low population counties" means the counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Inyo, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, and Yuba.
- (9) "Executive Officer" means the Executive Officer of the California Air Resources Board or delegated representative.
- (10) "Fleet" means one or more vehicles owned by an entity and includes rental or leased vehicles that are considered owned by the fleet owner.
- (11) "Fleet owner" means the person or entity that is the owner of the vehicles comprising the fleet. The owner shall be presumed to be either the person registered with the California Department of Motor Vehicles (DMV) as the owner or lessee of a vehicle, or its equivalent in another state, province, or country; vehicle ownership is based on the vehicle registration document or the vehicle title, except as specified in (A) and (B) below:
 - (A) For-vehicles that are owned by the government, the owner shall be the department, agency, branch, or other entity of the government to which the vehicles in the fleet are assigned or which has responsibility for maintenance of the vehicles.

(B) For vehicles that are rented or leased from a business that is regularly engaged in the trade or business of renting or leasing motor vehicles without drivers:

1. The owner shall be presumed to be the rental or leasing entity for purposes of compliance with section 95693.1, if:

- a. The rental or lease agreement for the vehicle is for a period of less than one year; or
- b. The rental or lease agreement for the vehicle is for a period of one year or longer, unless the terms of the rental or lease agreement or other equally reliable evidence identifies the party responsible for compliance with vehicular state laws to be the renting operator or lessee of the vehicle.

(C) For purpose of enforcement, if the vehicle is inspected and cited for noncompliance with this regulation and neither the operator of the vehicle nor the rental or leasing entity can produce evidence of the party responsible for compliance with state laws, the owner shall be presumed to be both the rental or leasing entity and the renting operator or lessee of the vehicle.

(D) A financing company or a person that only provides financing to a third party in the form of "finance leases," as defined in California Uniform Commercial Code Section 10103(a)(7), is not considered to "own" the vehicles that are financed. Similarly, a financing company or a person that only provides financing to a third party for powertrain retrofits is not considered to be the owner of the vehicle.

(12) "Gross vehicle weight rating" or "GVWR" means the same as CVC section 350, as indicated by the characters in the 4-8 positions in a standard 17-character Vehicle Identification Number (VIN).

(13) "Government agency" means any state or local public agency, or any other public entity with taxing authority. For the purposes of this regulation, this does not include federal government agencies.

(14) "Historical vehicle" means a motor vehicle as defined in CVC section 5004.

(15) "Lessee" means the same as defined in CVC section 371.

(16) "Lessor" means the same as defined in CVC section 372.

(17) "Manufacturer" means any entity or person who manufactures or assembles new on-road motor vehicles or yard tractors, or imports such vehicles for resale, or who acts for an entity or is under the control of any such person in connection with the distribution of new motor vehicles, but shall not include any dealer with respect to new motor vehicles received in commerce. In general, the term manufacturer includes any person who manufactures or assembles an on-road vehicle, a cab and chassis, or other incomplete on-road vehicle for sale in California or otherwise introduces a new on-road motor vehicle into commerce in California. This includes importers who import vehicles for resale. This does not include persons who supply parts to the importer or vehicle manufacturer of record.

(18) "Near-zero-emissions vehicle" or "NZEV" means a vehicle as defined in title 13, CCR section 1963(c)(16). It is a vehicle that is capable of operating like a ZEV for a minimum number of miles.

(19) "New motor vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser.

(20) "Notice to proceed" means a written direction to a vehicle manufacturer to commence production of a motor vehicle as provided in a contract.

(21) "Public agency" means a city, county, public utility, special district, or a public agency of the State of California, and any department, division, public corporation, or public agency of the State of California.

(22) "Responsible official" means either a principal executive officer, elected official, or delegated representative of the public agency.

(23) "Standard rounding convention" means if the calculated value is not equal to a whole number, the value shall round up to the nearest whole number when the fractional part is equal to or greater than 0.5, and round down to the nearest whole number if less than 0.5.

(24) "Tractor" means an on-road vehicle meeting one of the following:

(A) The definition of "tractor" in title 17, CCR section 95662(a)(23), or

(B) The definition of "vocational tractor" in title 17, CCR section 95662(a)(27).

(25) "Used zero-emissions vehicle" means a zero-emissions vehicle that is not a new motor vehicle.

(26) "Vehicle" or "motor vehicle" means self-propelled equipment that meets either of the following criteria:

(A) Has a GVWR of 8,501 pounds or more and is intended for use on highways, and meets the definition set forth in title 17 CCR section 95662(a)(26); or

(B) Is an off-road yard tractor

(27) "Vehicle body type" means commonly used vehicle body descriptions to be used when reporting to CARB including the following: beverage truck, boom/bucket, box reefer, box dry van, two-axle bus, three-axle bus, car carrier, concrete mixer, concrete pump, crane, drill rig, dump, flatbed, stake bed, garbage packer, garbage roll-off, other, pickup bed, service or utility body, sweeper, tank, tractor day cab, tractor sleeper cab, tow, vacuum, water, van-cargo, van-step, van passenger, yard tractor.

(28) "Vehicle model year" means a designation meeting the definition of "model year" under title 17, CCR section 95662(a)(16).

(29) "Vehicle purchase" or "purchase" means the agency has identified, committed and encumbered funds and executes one of the following for immediate delivery:

(A) A written "notice to proceed" executed by a fleet to a vehicle manufacturer to begin production of a vehicle either:

1. Under a previously-entered purchase contract; or

2. To execute a contract option;

(B) If no notice to proceed is issued, a written purchase agreement between a fleet and a vehicle manufacturer that specifies the date when the vehicle manufacturer is to proceed with the work to manufacture the vehicle; or

(C) A signed written lease agreement between a fleet owner and a vehicle manufacturer or sales representatives for a new motor vehicle to be placed in service for a contract term of one year or more.

(30) "Yard tractor" means an on-road or off-road vehicle that has a movable fifth wheel that can be elevated and is used in moving and spotting trailers and containers at a location or facility. Yard tractors are also commonly known as yard goats, hostlers, yard dogs, trailer spotters, or jockeys.

(31) "Zero-emissions vehicle" or "ZEV" means an vehicle with a drivetrain that produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) or greenhouse gas under any possible operational modes or conditions.

(c) Exemptions. This regulation does not apply to the following:

- (1) Emergency vehicles as defined in CVC section 165
- (2) Dedicated snow-removal vehicles as defined in section 95693(b)(7)
- (3) Historic vehicles as defined in section 95693(b)(14)
- (4) Military tactical vehicles as defined in title 13, CCR section 1905
- (5) School buses as defined in California Vehicle Code 545(a); ~~or~~
- (6) Transit vehicles subject to the Innovative Clean Transit regulation commencing with title 13, CCR section 2023; ~~or~~

(7) Electric utility vehicles used for repairing damaged lighting or electrical distribution equipment or infrastructure, or serving electric generation facilities.

NOTE: Authority cited: Sections 38501, 38510, 38560, 38566, 39500, 39600, 39601, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, 43104 Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38580, 39000, 39003, 39650, 39655, 43000, 43000.5, 43013, 43016, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43205, 43205.5 Health and Safety Code.

Section 95693.1 Public Fleets ZEV Purchase Requirements

Regulated entities must comply with the following requirements:

(a) General requirements. Beginning with the applicable effective dates, a public agency-must comply with the following requirements:

(1) ZEV purchase requirements. In any given calendar year, public agencies must purchase ZEVs as specified by the following schedules:

(A) For a public agency-whose jurisdiction is less than 10% ~~not solely~~ in a designated low population county:

1. Starting January 1, 2024, 50 percent of the total number of new motor vehicle purchases in each calendar year must be ZEVs; and
2. Starting January 1, 2027, 100 percent of the total number of new motor vehicle purchases in each calendar year must be ZEVs.

(B) For a public agency whose jurisdiction is at least 90% ~~solely~~ in a designated low population county:

1. Starting January 1, 2027, ~~50-100~~ percent of the total number of new motor vehicle purchases in each calendar year must be ZEVs.

2. Starting January 1, 2030, 100 percent of the total number of new motor vehicle purchases in each calendar year must be ZEVs.

(C) Until January 1, 2035, NZEV purchases will be counted the same as a ZEV purchase ~~if a public bid is issued to purchase ZEVs and NZEVs, but no responsive bids for ZEVs were received for that bid.~~

(2) Rounding. If the calculated required minimum number of ZEV or NZEV purchases as set forth in section 95693.1(a)(1) does not result in a whole number, then use the standard rounding convention as defined in section 95693(b)(23).

(3) ZEV accounting. The required minimum number of ZEV or NZEV purchases each calendar year can be met with any combination of new ZEV or NZEV purchases and any ZEV additions to the fleet, including a used or retrofitted ZEV. Each ZEV or NZEV may be counted only once as long as the vehicle remains in the fleet to count towards compliance with the purchase requirement for a given compliance year.

(4) Order cancellations. If a fleet owner-cancels a notice to proceed or other executed purchase or leasing contract at any time before the vehicle is delivered, the purchase will be considered invalid and will not count towards required total new motor vehicle purchases.

(5) Compliance date. Annual compliance with the ZEV purchase requirements is determined as of January 1 of each calendar year.

(6) Exemptions or extensions. Qualifying fleet owners may use exemptions specified in section 95693.2.

(7) Reporting requirements. Annual reporting is required by March 1 each year as specified in section 95693.3.

(8) Recordkeeping requirements. Records must be kept as specified in section 95693.4.

(9) Requirement to remain in compliance. The regulated entity must remain in compliance with this regulation at all times while operating in California.

NOTE: Authority cited: Sections 38501, 38510, 38560, 38566, 39500, 39600, 39601, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, 43104 Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38580, 39000, 39003, 39650, 39655, 43000, 43000.5, 43013, 43016, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43205, 43205.5 Health and Safety Code.

Section 95693.2 Public Fleet Exemptions

(a) Exemption for Emergency Response. Public agencies can apply for an exemption from ZEV or NZEV purchase requirements if the vehicles will be designated to provide emergency response in supporting electricity, natural gas, water, or wastewater services across California or in other states. A public agency may receive an exemption from the ZEV purchase requirements set forth in section 95693.1 if the following conditions are met:

~~(1) More than 75 percent of that body type in the fleet are already ZEVs~~

(2) The agency has obtained a letter from its governing board that explains ~~is able to demonstrate~~ that the necessary publicly accessible charging or hydrogen fueling infrastructure or mobile fueling options are not readily available in the areas to be served in emergency response or expected to be unavailable during an emergency response event.

(3) The agency has obtained a letter from the governing body that lists the number of vehicles to be purchased for emergency response with details about the vehicle type, and what areas of the service territory ~~country~~ are typically served, and a statement that explains why available ZEVs are not suitable to be dispatched to serve those areas in emergency response; and

(4) The agency must keep records of the letter signed by the governing body and make it available to CARB staff upon request.

The Executive Officer will grant the ~~exemption extension~~ if the conditions of this section have been met, ~~provided no more than 25 percent of the total vehicles in the fleet would be using extensions~~. Vehicles approved for the exemption extension will be designated as using the “emergency response” vehicle extension when they are reported.

Alternative Provision:

(b) Exemption for Electric Utility Public Fleets: Electric utility vehicles designated for repairing damaged lighting or electrical distribution equipment or infrastructure, or serving electric generation facilities.

(c) Exemption for Situations Beyond Public Fleet Control. Public agencies can apply for an exemption from ZEV or NZEV purchase requirements set forth in section 95693.1 if any of the following conditions are met:

(1) The agency issues a public bid to purchase ZEVs and NZEVs, and fewer than 2 responsive bids are received.

(2) The manufacturer is not able to supply the vehicle within the timeframe specified in the public agency’s proposal.

(3) ZEVs and NZEVs of the equipment type and characteristics necessary for the purpose(s) or application(s) are unavailable from at least two suppliers.

(4) Available ZEVs and NZEVs are not suitable based on the public agency’s documented safety or reliability requirements.

NOTE: Authority cited: Sections 38501, 38510, 38560, 38566, 39500, 39600, 39601, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, 43104 Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38580, 39000, 39003, 39650, 39655, 43000, 43000.5, 43013, 43016, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43205, 43205.5 Health and Safety Code.

Section 95693.3 Public Fleets Reporting

(a) Method of Reporting. Reports submitted to comply with sections 95693 through 95693.5 must be submitted online through CARB’s Advanced Clean Fleets webpage.

(b) Reporting Deadline and End Date. No later than March 1 of each year until March 1, 2045, each fleet must annually submit a compliance report to the Executive Officer showing the fleet composition as of January 1 of each year. The initial report must be submitted by March 1, 2024, **or March 1, 2027 for agencies whose jurisdiction is at least 90% in a designated low population county.**

(c) Fleet Reporting. Fleet owners must report the following information about the fleet owner and all vehicles in the fleet.

(1) Public agency information

(A) Public agency name **and the department, agency, branch, or other entity of the public agency to which vehicles are assigned.**

(B) Primary physical address where records will be kept

(C) Designated contact mailing address

(D) Designated contact person name

(E) Designated contact person phone number

(F) Designated contact person email

(G) Identify the **fleet** jurisdiction (state, county name, city name or other local governments)

(H) If the fleet being reported is managed by someone other than the primary agency report the CARB issued ID of the primary agency; and

(I) Name of the responsible official.

(2) Vehicle Information. A fleet must report the following information to CARB for each vehicle that has been placed in service and operates in California:

(A) Vehicle Identification Number (VIN)

(B) Vehicle make and model

(C) Vehicle model year

(D) Vehicle license plate

(E) Vehicle weight class category (8,501-14,000; 14,001-26,000; 26,001 and up)

(F) Vehicle body type

(G) Fuel and drivetrain type

(H) Date bid awarded, **if available**

(I) Date vehicle purchase was made, **if available**; and

(J) Date vehicle was placed in service, **if available**

NOTE: Authority cited: Sections 38501, 38510, 38560, 38566, 39500, 39600, 39601, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, 43104 Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38580, 39000, 39003, 39650, 39655, 43000, 43000.5, 43013, 43016, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43205, 43205.5 Health and Safety Code.

Section 95693.4 Public Fleets Recordkeeping

General requirement. Affected fleets must ensure that the followings forms of documentation are available upon request or be made available to CARB staff within **10 calendar days**~~72 hours~~ of an official written or oral request:

(a) Beginning January 1, 2024, the public agency-shall keep the following records:

(1) A list of vehicles in the fleet including the vehicle identification number, license plate, vehicle type, vehicle model year, fuel and drivetrain type, vehicle registration information, purchase orders, and public bid contracts. If using exemptions, the fleet owner must keep records used to qualify for the exemptions.

(b) Retention of Records. Records of reported information required in section 95693.3 and documentation must be kept by fleets for CARB to audit for a period of eight years after the information is initially reported to CARB and at least three years after the vehicle is retired from the fleet.

NOTE: Authority cited: Sections 38501, 38510, 38560, 38566, 39500, 39600, 39601, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, 43104 Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38580, 39000, 39003, 39650, 39655, 43000, 43000.5, 43013, 43016, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43205, 43205.5 Health and Safety Code.

Section 95693.5 Public Fleets Enforcement

(a) Enforcement of Requirements. A fleet owner is subject to the following:

(1) Audit of Records. Within ~~10 calendar days~~**72 hours** of a request by CARB, a fleet must make all records required to be kept per sections 95693 through 95693.5 available to the Executive Officer for audit to verify compliance and the accuracy of the reported information.

(2) Right of Entry. For the purpose of inspecting vehicles and records subject to this regulation and to determine compliance with this regulation, an agent or employee of CARB, upon presentation of proper credentials and with at least 10 calendar days' notice to the public fleet owner, has the right to enter any facility (with any necessary safety clearances) where vehicles are located or vehicle records are kept, during normal business hours.

(b) Severability. If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this regulation is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the regulation.

(c) Exemptions Pursuant to Declared Emergency. Any out-of-state vehicle operating pursuant to an Executive Order or Emergency Declaration by the Governor of California, shall be exempt from the requirements of this regulation ~~for 30 days from the first day of operation~~. Drivers operating vehicles under these emergency orders shall keep in the vehicle copies of dispatch records and/or contracts verifying support of emergency operations. The driver and/or fleet owner shall make the records available to California Air Resources Board staff or appropriate California official, such as a California Highway Patrol officer within 72 hours upon request.

NOTE: Authority cited: Sections 38501, 38510, 38560, 38566, 39500, 39600, 39601, 39650, 39658, 39659, 39666, 39667, 43013, 43018, 43100, 43101, 43102, 43104 Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38560, 38580, 39000, 39003, 39650, 39655, 43000, 43000.5, 43013, 43016, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43205, 43205.5, 43212 Health and Safety Code.