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Re: California Municipal Utilities Association's Comments on the September 9, 2021, Workshop on the Proposed Advanced Clean Fleets Rule

Introduction

The California Municipal Utilities Association (CMUA) appreciates the opportunity to submit these comments on California Air Resources Board's (CARB) Advanced Clean Fleets (ACF) Proposed Draft Regulation (Proposed Rule) as presented at the September 9, 2021, workshop.

CMUA is a statewide organization of local public agencies in California that provide electricity and water service to California consumers. CMUA membership includes publicly-owned electric utilities (POUs) that operate electric distribution and transmission systems that serve approximately 25 percent of the electric load in California, and public water agencies that serve approximately 75% of California's water customers. California's POUs and public water agencies (collectively Public Utilities) are committed to, and have a strong track record of, providing safe, reliable, affordable, and sustainable electric and water service.

CMUA's member Public Utilities operate highly specialized medium- and heavy-duty (MHD) fleet equipment to build and maintain the infrastructure needed to support California's clean water and clean energy goals, including the infrastructure needed to fulfill California's clean transportation goals. In addition to building the infrastructure needed for electrification, many CMUA members have developed incentives to promote electric vehicle (EV) uptake, including specific rate structures to promote EV charging as well as utility-specific programs that provide incentives for the purchase of EVs or EV charging equipment (EVSE).

CMUA supports California's goal to transition to clean transportation resources, including the increased use of near-zero-emission vehicles (NZEV) and zero-emission vehicles (ZEVs), where feasible. As operators of critical public service infrastructure, clean fuel providers, clean transportation program administrators and MHD fleet operators, CMUA members provide a unique and important perspective on what is

needed to develop a successful ACF regulation. To that point, we offer the following recommendations on the Proposed Rule:

1. *CARB Should Create an Infrastructure Working Group*
2. *CARB Must Ensure That the Proposed Rule Will Not Obstruct Public Utilities' Obligation to Provide Safe, Reliable, and Affordable Electricity and Water Service.*
3. *Compliant Vehicles Must Be Able to Meet Public Utility Work Needs*
4. *Public Utility Vehicles Must Be Available to Respond to Wildfires, Earthquakes and Other Natural Disasters*
5. *CARB Should Establish a Public Process to Confirm That Compliant Vehicles Are Available in Sufficient Quantity Before Imposing a Purchase Requirement*
6. *The Proposed Rule Should Recognize Public Agency Purchasing and Budget Requirements*

1. CARB Should Create an Infrastructure Working Group

CMUA appreciates that CARB staff has recently scheduled a working group meeting to evaluate concerns specific to public fleets and another working group focused on the high priority fleet proposed rule. Among other issues, this working group should investigate the supply questions raised herein and by other stakeholders.

CMUA encourages CARB to develop an Infrastructure Working Group. Serving the additional load that will result from migrating California's vehicle fleet to ZEV technology will require substantial planning and investment in electricity infrastructure. To better inform both this process and the ACF, CMUA encourages CARB to stand up a working group focused on infrastructure development. This working group would benefit from including representatives from the California Energy Commission, utility representatives, as well as experts from California's various balancing area authorities.

2. CARB Must Ensure That the Proposed Rule Will Not Obstruct Public Utilities' Obligation to Provide Safe, Reliable, and Affordable Electricity and Water Service.

Clean water and safe and reliable electricity are not just products to help improve the bottom line of a company. They are fundamental to maintaining safe and healthy communities. The success of the ACF relies on CARB demonstrating that the rule will not reduce or stifle, in any way, the ability of California's Public Utilities to provide these important public services.

For example, Assembly Bill (AB) 685, (Eng, 2012) declares that it is the established policy of the state of California that every human being has the right to safe, clean affordable and accessible water.[1] AB 685 further requires that state agencies "shall consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses

[1] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB685

of water".[2] Because the Proposed Rule presents the real possibility of causing a disruption to the supply of safe, clean, affordable, and accessible water, CARB should provide a full evaluation of the potential impact of this rule and incorporate language that would eliminate any risk of disrupting water supplies.

3. Compliant Vehicles Must Be Capable of Meeting Public Utility Work Needs

a. Public Utility fleet vehicles must be capable of satisfying diverse work needs.

California's Public Utilities use diverse and highly specialized vehicles to build and maintain the state's electric and water infrastructure.[3] In addition, California will rely on electricity workers and POU fleet vehicles to build and maintain the needed charging infrastructure to support the state's expanding building and transportation electrification goals. As a result, California's electric utility fleets present a special demand – in order to build new electricity infrastructure, electric utilities need vehicles that do not require electricity on the jobsite. For example, it stands to reason that in order to build new electricity infrastructure, utility crews and vehicles will be deployed to areas where there is no electricity available.

CMUA recognizes that the diverse fleets used by the state's Public Utilities complicate regulatory efforts to promote fleet electrification.[4] In order for a ZEV or NZEV to meet the duty needs for Public Utilities, the vehicle must not only have the energy needed to get to and from the jobsite but must also be capable of providing the energy needed for the work demands while at the jobsite.

b. Public Utility fleet vehicles must be capable of responding to unpredictable work needs.

Additionally, Public Utility fleet vehicles must be sufficiently flexible to immediately respond to unforeseen system maintenance demands. These unexpected maintenance demands may take Public Utility crews and vehicles to remote areas in the service territory, where there is no charging infrastructure, to perform work of indefinite duration.

When expanding electric service, in order to protect worker safety, lines must be de-energized before crews can begin their work. As a result, compliant vehicles must be able to leave the yard, get to the jobsite, maintain power for the duration of the work at the jobsite, and return to the yard, without requiring recharging anywhere during this process. Any vehicle that cannot accomplish this provides little, if any, operational value.

4. Public Utility Vehicles Must Be Available to Respond to Wildfires, Earthquakes and Other Natural Disasters

[2] State Water Code, Section 106.3 (b).
[3] The comments by the Specialty Vehicle Coalition, submitted on November 10, 2020, provide an overview of some of the different types of vehicles used by California's Public Utilities. See https://www.arb.ca.gov/lists/com-attach/2-acf-comments-ws-AWJcNlUxAzFSOgZZ.pdf.
[4] Successful development of the ACF will require that vehicles are available to fulfill all industry work needs.

a. California depends on Public Utilities to repair and restore service as soon as possible following a natural disaster.

Wildfires, earthquakes, and other natural disasters present a special use case showing how important it is that Public Utilities can procure MHD fleet vehicles that fully meet the work demands. Public Utilities use MHD fleet vehicles to provide emergency service to restore water and electric service to communities during and after catastrophic disasters such as earthquakes and wildfires. Additionally, Public Utility vehicles often serve as critical support tools for firefighters, police, and other first responders. Electricity vehicles support efforts to de-energize lines so that first responders can work safely in responding to an emergency, or repair and reconnect service to support critical disaster relief efforts. Public water agency crews similarly work to repair or operate important water lines to support firefighting efforts. Public water agencies also employ tanker trucks to deliver water to support firefighting efforts in areas where there is no water supply. In these ways, Public Utility crews and vehicles work in critical support roles to help first responders battle California's wildfires.

A widespread disaster, such as an earthquake, would result in utilities deploying most, if not all of their vehicles in emergency service restoration that can be expected to take weeks. Such a disaster is not a remote possibility, but a probable event. The United States Geological Survey has determined a 60% likelihood that a 6.7 magnitude earthquake will occur in Los Angeles within the next 30 years. In San Francisco, the likelihood is 72% that such an earthquake will occur in the same time period.[5] When this happens, Public Utilities will need to deploy their MHD vehicles for days, and likely weeks to provide emergency service restoration.

b. The Proposed Rule should expand the exemption for emergency response.

CMUA appreciates that the Proposed Rule recognizes that Public Utilities must be capable of responding to emergencies such as wildfires, earthquakes, and other natural disasters. The Proposed Rule authorizes an exemption for ZEV purchase requirements *within a particular body type* so long as more than 75% *of that particular body type* are already ZEVs.[6] However, this exemption is insufficient to enable needed emergency response for many CMUA members. To address this concern, the Proposed Rule should not arbitrarily restrict emergency response exemptions by body type. Further, the Proposed Rule should reasonably account for the needs of smaller fleets.

i. Any emergency response exemption should be applied fleet-wide and not restricted on a per-body-type basis.

Requiring that 75% of *a particular body type* be ZEV before authorizing an emergency response exemption *for that body type* does not reflect the actual needs Public Utilities face when responding to wildfires, earthquakes, or other natural

[5] https://www.usgs.gov/faqs/what-probability-earthquake-will-occur-los-angeles-area-san-francisco-bay-area?qt-news_science_products=3#qt-news_science_products
[6] Proposed Rule, Section 95693.2 (a), p. 8.

disasters. The percentage of vehicles of a particular body type that are needed to respond to emergencies varies. It is not unusual that 100% of particular vehicle body types are deployed in emergency response. CARB should remove the arbitrary restriction of a per-body-type emergency response exemption as currently written in the Proposed Rule and apply all emergency response exemptions on a fleet-wide basis.

ii. The Proposed Rule should reflect the unique needs facing smaller Public Utilities.

Many of California's smaller Public Utilities must dispatch well over 75% of their MHD fleet during natural disasters. For example, to provide emergency service repair during the Dixie fire, some CMUA members have dispatched all of their MHD fleet assets for multiple days. With increased fire risk, this is becoming an increasingly frequent scenario. Mid-sized and smaller utilities must deploy all of their vehicles, in addition to seeking mutual aid assistance. A small emergency response exemption would have the effect of disabling such utilities from performing critical emergency service restoration. The Proposed Rule must recognize the unique operational needs of smaller fleets. This is particularly important considering the potentially disastrous impact that the Proposed Rule will have on mutual aid.

c. Critical service restoration often relies on mutual aid efforts from other utilities.

The ACF must recognize the important role of mutual aid in responding to electric and water service restoration emergencies. It is not uncommon for natural disasters, such as wildfires, earthquakes, or significant storm activities to overwhelm a utility's crew and equipment capabilities. In order to restore service as quickly as possible, a national mutual aid network exists between over 1,000 utilities that agree to provide help when needed.[7] But, similar to the challenge faced by the local utility, other utilities cannot send fleet assets into areas lacking sufficient refueling facilities.

This is not simply a concern with California fleets not being able to provide aid to utilities in other states. Recently a severe storm in southern California knocked down over 120 electric poles and broke 10 water pipes in the Imperial Valley, knocking out service to thousands of residents. The Imperial Irrigation District received offers of mutual aid from San Diego and Arizona. But due to a lack of natural gas fueling infrastructure, these fleet assets could not be sent, extending power and water outages. In addition to the impact this had on extending customer outages, without this needed mutual aid, a key local renewable generating facility was unable to deliver power for 10 days.

5. CARB Should Establish a Public Process to Confirm That Compliant Vehicles Are Available in Sufficient Quantity Before Imposing a Purchase Requirement

a. Public Utilities must not be prohibited from procuring needed fleet vehicles when no compliant vehicles are available.

[7] Please see https://www.publicpower.org/system/files/documents/Mutual%20Aid%20Fact%20Sheet.pdf.

CMUA's members have demonstrated their commitment to growing and enabling California's clean transportation future. The ACF regulation can play a significant part in moving the state toward that future. However, in order for the ACF regulation to be successful, it is critical that there are vehicles that can fulfill the duty needs of California's diverse MHD fleets, including the fleets of the state's Public Utilities.

In the event that no qualifying NZEVs or ZEVs are available, California's POUs and public water agencies must be able to purchase the vehicles needed to provide build and maintain electric and water services. The current approach, as indicated in the September 9th workshop would prohibit Public Utilities from purchasing vehicles needed to support their service needs.

While CMUA recognizes that the Proposed Rule authorizes Public Utilities to purchase used MHD vehicles, CARB must recognize that there will be few used vehicles available once the Proposed Rule is implemented. Under a new mandatory ZEV purchase requirement, it is highly unlikely that owners of existing vehicles will be willing to sell when doing so would require them to replace the vehicle with a ZEV that would likely be unavailable. As a result, CARB must not implement a rule that would prohibit utilities from purchasing needed equipment solely because appropriately equipped NZEV or ZEV vehicles are not available.

b. CARB should establish an independent technical advisory committee to analyze report on emerging compliant vehicle technology and supply in a public and transparent environment.

CMUA supports California's clean transportation goals. In order for the ACF regulation to work and support the state's goals, there must be an achievable and reasonable compliance option. CMUA's members have expressed concern about availability of compliant vehicles that can fulfill the work requirements of public utilities.

In order to help ensure that the ACF regulation actually works to increase ZEV uptake among MHD fleets, CMUA encourages CARB to stand up an independent ZEV Technology Committee. Such a group could evaluate the availability of ZEV fleet solutions that are appropriate to various industry sectors, including the Public Utility sector. Once such a committee were to release a report demonstrating that ZEV technology has been developed that will fulfill the work needs and is available in the needed scale pursuant to the ACF, then the ACF procurement requirement can be implemented.

This would not be the first time that CARB has used the report of an independent technology committee to establish the timeline for a ZEV regulation. In 1995, CARB convened a Battery Technology Advisory Panel (BTAP), comprised of technical and industry experts, to evaluate and report on the state of technology for batteries needed to build electric vehicles.[8] CARB used the information in the BTAP's biennial reports to modify the consumer ZEV mandate, delaying implementation when it the technology

[8] See *Performance and Availability of Batteries for Electric Vehicles: A Report of the Battery Technical Advisory Panel*, December 11, 1995, at https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/reports/l290.pdf

was not ready, while demonstrating to manufacturers that there would be a market once the technology was available.

CMUA encourages CARB to adopt a similar approach in the ACF by standing up a committee to evaluate and report on the capabilities and actual supply of compliant vehicles. There are many challenges to bringing compliant MHD vehicles to market at the needed scale. A MHD NZEV and ZEV Advisory Committee could evaluate the state of technology and the state of the market while addressing potential issues that may be blocking the actual supply of compliant vehicles available for delivery. Key information to be considered would include technology development, specific fleet needs, supply chain limitations, shipping, and resource allocation challenges. In addition to providing objective information about the potential supply of compliant vehicles, such a committee could advise CARB on how to develop regulatory language that can enable regulatory compliance when product availability is insufficient.

By establishing an independent MHD ZEV and NZEV Advisory Committee, CARB can reduce the risk of regulatory failure should there be unanticipated delays or shortages of market supply for appropriately equipped NZEV or ZEV vehicles. Should the report demonstrate delays in product availability, the report would serve as a means to adjust a purchase obligation that would otherwise fail due to a lack of compliant vehicles available for purchase. If no such delays occur, then an Advisory Committee report could serve as support to commence purchase requirements under the ACF.

6. The Proposed Rule Should Recognize Public Agency Purchasing and Budget Requirements

a. Public Utility procurement rules typically require at least two qualifying bidders in order to complete a purchase.

As public agencies, California's Public Utilities often face budgeting and procurement restrictions over which they have no control. Among these is the requirement that Public Utilities receive multiple qualifying bids in response to a Request for Offer (RFO). This multiple bidder requirement is not simply a rule imposed by a private board of directors to protect a firm's bottom line. This rule, and other similar rules are established to provide important protection for all taxpayers who ultimately fund public expenditures. The Proposed Rule must recognize this and must not compel local public agencies to violate any statutory restrictions.

b. The Proposed Rule should recognize the public budgeting process.

In addition to procurement restrictions, many local public agencies face budgetary restrictions over which they have no control. The Proposed Rule does not currently allow a cost limit for a qualifying ZEV or NZEV purchases. CMUA agrees that it is reasonable to anticipate that once appropriate ZEV technology is developed to serve the needs of electric and water utilities, both initial procurement and long term maintenance costs can be expected to fall over time. However, CARB recognizes that initial costs will be significantly higher. This creates a challenge for public agencies. For many of them it is not simply a matter of clearing a high cost purchase with shareholders or a board of directors. Many public agencies face budget restrictions

established in local statute that require a separate statutory or regulatory action to modify. In such circumstances, budget expansion requires multiple years to analyze cost increases and bring them before taxpayers in a public process. Until complete and accurate information about NZEV and ZEV costs is available, many Public Utilities will be unable to execute such budget increases. CMUA encourages CARB to include language recognizing potential budget restrictions that would prohibit public agencies from increasing their budgets in a short time period.

c. Purchases should be based on contract year.

CMUA appreciates the change in the Proposed Rule recognizing the year purchased, instead of the model year, to determine a ZEV or NZEV purchase requirement. Vehicle purchases are primarily based on functional characteristics. Additionally, these purchase contracts may take multiple years to fulfill. The model year of the actual chassis may not be known until the vehicle is delivered.

Because large purchases of MHD fleet vehicles can frequently take multiple years, the Proposed Rule should also clarify that a purchase year is determined by the year in which the contract for purchase was signed, not when the vehicle was delivered.

Conclusion

CMUA recognizes that an effective and workable ACF rule will help California reach its clean transportation goals; it is in that spirit that these comments are offered. CMUA appreciates your consideration of these comments and looks forward to collaborating with CARB on the development of the ACF rule.

Respectfully submitted,

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