PENSKE

Art Vallely
President

October 22, 2021

Tony Brasil, Branch Chief
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Comments on Proposed Advanced Clean Fleets Regulation

Dear Mr. Brasil:

Thank you for the opportunity to provide comments on the California Air Resources Board's (CARB) draft language for the Advanced Clean Fleets (ACF) Regulation. Penske Truck Leasing Co., L.P. ("Penske") is a nationwide leader in low-emission transportation and has made a company-wide commitment to a comprehensive transition to zero emission vehicles.

As one of the nation's leading transportation solutions providers, Penske shares CARB's zero-emission goals. Our commitment to a shift to zero emission transportation technology is reflected by our investments over the last four years in multiple medium- and heavy-duty electrification demonstration and deployment projects. These projects have afforded Penske invaluable experience working with CARB, California utilities, major vehicle OEMs (including startups), charging infrastructure manufacturers and developers, battery providers, and customers in the deployment and operation of new battery-electric transportation services across the entire supply chain.

We believe there are very few, if any, large transportation providers doing more than Penske to advance zero emission and infrastructure technology. Penske currently operates one of the largest commercial fleets of medium- and heavy-duty zero emission vehicles (ZEVs) in the United States with battery electric powered trucks from multiple OEMs, including Freightliner, Volvo, Navistar, Ford, Roush, Kalmar, Orange EV, and many others. Many of these ZEVs operate out of six (6) Penske sites in California, which are fully equipped with medium- and heavy-duty EV charging infrastructure. In addition to our current sites, we are now in the planning and development stages to equip most of our owned sites throughout the state with charging equipment that will allow us to advance our shared zero-emission goals.

Penske Truck Leasing
2675 Morgantown Road
Reading, PA 19607

Tel 610 775 6393
Cell 610 790 4710
art.vallely@penske.com
gopenske.com

Penske's growing familiarity with ZEVs, coupled with our comprehensive and incomparable understanding of charging infrastructure and real-world commercial fleet applications, uniquely positions us to be a resource for CARB for front-line data and information on the availability, use, and application of ZEV's, and allows us to serve as a partner in CARB's efforts to draft and adopt a successful ACF regulation.

Our experience has led to the identification of several concerns that we would like to raise for CARB's consideration and clarification. Simply stated, the draft ACF regulation creates confusion that will result in considerable unintended consequences that we believe will adversely impact implementation of the ACF rule. The draft rule requires any entity with $50 million or more in gross annual revenue, or with 50 or more vehicles, to begin meeting ZEV phase-in milestones beginning in 2025. However, under the current construct, the rule specifically includes rental and leased vehicles by including rental and leasing entities as fleet owners unless otherwise written in the rental or lease contract.

As we will outline below, because of the transient nature of truck rentals, and the unique position full-service truck lessors occupy, including leasing or renting entities as fleet owners inadvertently captures vehicles that should not be considered part of a company's California fleet and creates confusion as to the party that should be responsible for compliance. The following feedback is focused on improving and clarifying the ACF rules to achieve our shared goal of a successful large-scale, near-term transition to zero-emission fleet operations.

I. High Priority Fleet Owner Definitions

Short-term rental and leasing companies play distinct and critical roles in the trucking, logistics, and freight movement industries throughout California and the U.S. Truck rental and leasing is especially important in the mass commercialization of new truck technologies, including "try before you buy" strategies, provision of unfamiliar maintenance services, delivery of unconventional fueling or charging capabilities, and arrangement of much needed financial flexibility. Penske's customers have depended and will continue to depend on our well-established expertise to try, assess, and ultimately minimize their risk as they move to adopt zero-emission technology.

The rental and full-service leasing segments vary significantly in their operations and suitability for near-term electrification in ways that are not reflected in the proposed rule language. Specifically, with respect to our rental fleet we are concerned with the applicability of the rule to a transient national fleet of rental vehicles that primarily serve the short-term flex needs of small businesses and consumers. This inventory of vehicles shifts from state to state, and often operates only temporarily in California. With respect to leasing, the long-term lease definitions in the draft rule do not align with standard industry practices, run counter to practical application, and improperly allocate legal/compliance responsibility to lessors that don't use or operate leased vehicles.

a. Short-Term Rental Fleet

Short-term rental fleets (i.e., less than one year as defined by the ACF rule) are primarily utilized to serve the temporary needs of businesses and consumers. Most of Penske's rental customers are small businesses who need trucks for one-time jobs or to flex up for limited high-season demand, such as caterers working the occasional large event or a florist accommodating increased delivery requests for Mother's Day or Valentine's Day.

Nationwide, Penske owns tens of thousands of vehicles for use in short-term rentals, of which several thousand are domiciled in California. However, the actual number of our vehicles that have the potential to operate in California is highly variable and depends on our customers' fluctuating business needs. Like vacation car rentals, truck rentals can originate from and end up in any of our over 2,700 nationwide company-owned and agent locations, often with changes that are unplanned. For example, someone moving a child for college may rent a truck in Chicago and leave the truck in San Diego. That truck may remain in California for hours or days, and may not return to the state for months, years, or ever.

The ACF rule defines a fleet as any vehicle that operates in California regardless of how many days or miles it operates within the state. This would force Penske to consider nearly its entire U.S. fleet as subject to the rule, as any one of the vehicles in our national fleet could conceivably enter and leave California at any time during our ownership, therefore inadvertently becoming part of the ACF defined California fleet.

In addition, these inherently variable and transient vehicle movements are misaligned with nearly every metric for electrification viability. While electric box trucks are commercially available in limited supply, they are best suited for return-to-base fleets with regular, defined operations within a 120-mile daily range, and for companies that can invest in targeted depót charging. In contrast, short-term rentals rarely travel the same route, serve the same customer, maintain specific domiciles, or have reliable access to electric infrastructure where needed. Making it more difficult, while Penske owns these vehicles, it in no way directs or operates their movements. The mostly small business customers that direct their own operations are not required nor able (practically speaking) to purchase electric trucks, and as a result, would not have the requisite charging infrastructure to utilize battery electric short-term rental vehicles.

Therefore, given the unique challenges identified above, Penske requests CARB consider the following for short-term rental vehicles:

1. Treat short-term rental vehicles the same as small business fleets since most short-term rentals support these small businesses. The California fleet size definition contained in the current ACF draft rule should essentially modify the ZEV phase-in targets for rental vehicles that operate temporarily in the state to align with the rules that will apply to small businesses with revenue under $50M and/or fleets of under 50 vehicles.

    - To meet these criteria, we suggest that short-term rental vehicles should be younger than 10 model years old and meet current clean engine rules as set forth by California regulation and/or statute to help ensure the lowest emission vehicles are operating throughout the state.

2. Upon adoption of the ACF rules for all fleets (regardless of size) for California, short-term rental fleets would include those short-term rental vehicles that:

    - are registered and/or titled in California with the CA DMV;
    - are registered or domiciled in another state that operate in California for greater than 180 days; or
    - are domiciled primarily in California; and
    - meet current clean engine rules as set forth by California regulation and/or statute.

3. Upon adoption of the ACF rules for all fleets (regardless of size), for those rental vehicles not registered, domiciled, and/or titled in California, but that operate only periodically in California and would be classified as short-term rental fleet vehicles, as a class of vehicles, we suggest the following:

    - The fleet owner must be compliant with ACF regulations in California for all other vehicles that are subject to such requirements and under its common ownership or control.
    - The fleet owner must be compliant with all existing diesel emission regulations.

- All California short-term rental fleet vehicles would be younger than 10 model years old to help ensure the lowest emission vehicles are operating throughout the state.
- An ongoing reassessment of public infrastructure, vehicle technology, and zero-emission market acceptance suitable of supporting a short-term rental fleet transition.

b. *Full-Service Leasing Fleet*

The draft ACF regulation currently recognizes the vehicle owner as the one who registers and holds the vehicle, and with respect to rental and leasing, states that the leasing entity is presumed to be the party responsible for compliance, unless evidence indicates that the party responsible for compliance is the lessee or operator of the vehicle. Under full-service leasing arrangements, the agreements, operational models, and related responsibilities are fairly nuanced. Most full-service lease agreements are multi-year arrangements pursuant to which the owner/lessor registers the vehicle in its own name and performs periodic maintenance, but where the lessee/operator has sole and complete control over the vehicles' use and operation. In addition, the lessee determines the type of truck, cargo capacity, engine type, safety features, exterior designs, fueling and charging options, etc., with the goal of meeting its specific business needs. While the lessor owns and registers the vehicle in its name, performs periodic maintenance, and offers additional ancillary services like tax compliance, the lessee has total control over the use and operation of the vehicle, including the duty to operate the vehicle in accordance with all federal and state laws.

The current ACF rule provides that the owner/lessor in a full-service lease is the "fleet owner" for compliance purposes unless the lease agreement or other equally reliable evidence identifies the lessee and/or operator of the vehicle(s) as the party responsible for compliance. The motor carrier that is using and operating the vehicle should bear responsibility for compliance; therefore, the rule needs to be more precise to avoid confusion and avoid inadvertently placing compliance and purchasing responsibilities on the leasing company, which has no control over the operation of the vehicle. Additionally, the provision creates opportunities for operators of large fleets to avoid their own compliance responsibilities by dividing their fleets into contracts with multiple small leasing companies, each of which would fall below CARB's fleet owner thresholds, thereby evading CARB's compliance intent. As an illustration, based on the ACF rule as drafted, if Company A leases 100 vehicles from Penske, it could instead lease 20 trucks from five separate smaller leasing companies and avoid ever being considered a fleet owner for ACF compliance purposes.

To address full-service leases, alleviate confusion, and capture larger fleet operators who lease and operate such vehicles in the state of California, the ACF rule should state that, for entities that lease at least 50 vehicles pursuant to "full service" or "operating" leases, the fleet owner for purposes of compliance should be the entity that:

- operates such vehicles under its own motor carrier authority;
- is responsible for operational DOT-related safety obligations;
- is responsible for operating said vehicles in accordance with all state and federal laws (e.g., hours of service, CDL requirements, etc.); or
- has control over the use and operation of the vehicle (i.e., the lessee).

In addition, given the complexity of ownership, operation, and registration realities across the transportation sector, together with the intricacies of the ACF ZEV Fleet Milestone targets and/or alternative compliance requirement tracking, all California databases must be in complete alignment for vehicle specific ACF liability. Reports submitted through CARB's Advanced Clean Fleets webpage must clearly identify compliance responsibility *and* the registered owner (if different) by VIN. Given the interactions between the California Department of Motor Vehicles and CARB's regulatory verification procedures, Penske believes this can help clarify compliance responsibility and reduce potential registration challenges based on compliance questions.

II. California Regulated Fleet Definition

Successful regulations create achievable benchmarks, enable long-term business planning, and facilitate equitable market impacts within an individual business segment. Penske believes that certain aspects of the ACF language could be clarified to better enable these goals, while still achieving the market transformation that CARB intends.

Currently, the ACF rule requires High Priority fleets to calculate their ZEV milestone targets as a percentage of their fleet. While the language defines that applicable fleet by vehicle body and weight class, it does not identify clear or reasonable definitions for a California fleet count. Instead, staff has indicated that any vehicle that enters California, at any time, for any duration, is part of a regulated fleet. This captures all transitory vehicles from out of state, whether such vehicles are owned, leased, or rented. As noted above, when discussing electrification challenges for transitory short-term rentals, these trucks may only visit California for a few hours or days, and then not return to the state again. The current ACF rule would effectively capture the entire western and perhaps national vehicle fleet of many operators by counting vehicles that are inherently unsuitable for electrification due to their routes and infrastructure availability.

The inclusion of these vehicles in the base count would dramatically change the ZEV Milestone counts for fleets by including vehicles that are not actually part of the real-world California fleet. In addition, the need to register any out of state vehicle in California's system before it can enter the state creates significant implausible administrative and operational burdens, carries interstate commerce implications, and creates a potential liability for a single vehicle that crosses state lines when the California-based fleet as a whole is meeting the ZEV targets. Additionally, because of the transitory nature of the short-term rental fleets, rental companies such as Penske are often unaware of exact locations of rental trucks at a given time. To illustrate this point, a customer may rent a truck in Phoenix on a Monday, pick up furniture in El Centro, CA on Tuesday morning, and return the truck to the same location in Phoenix on Tuesday night; never informing the rental company of their whereabouts.

To address the infeasibility of near-term electrification for out of state vehicles, Penske recommends adding a California-based fleet definition that expressly excludes vehicles with short-term visits in California. We do believe that International Fuel Tax Agreement (IFTA) miles could help clarify which interstate vehicles have notable operations in California. We propose that vehicles operating less than 180 days in state should be completely exempt from the California fleet count. We further recommend that IFTA registered vehicles with under 50% of their miles in California be exempt from inclusion in the California fleet. Both these sets of vehicles would have a "short-term exemption" if pulled over, with GPS and IFTA records to service as verification.

We further recommend that IFTA vehicles at the 50% threshold and higher should be registered in the California system and automatically fall into the Group 3 ZEV Milestone category for turnover due to the infrastructure and operational challenges in electrification. Group 3 currently includes only sleepers and specialty vehicles, however many of these long-haul IFTA-registered vehicles are day cabs that have the same operational challenges as sleepers, as underscored by their multi-state operations. Group 3 as a whole is unsuitable in the near or mid-term for zero emission operations, and the market does not yet have answers for how to manage this transition. Including IFTA vehicles in this category acknowledges the real-world feasibility issues and allows time for vehicle technology as well as retail charging and fueling to scale up to meet demand in 2030 and beyond.

III. Timelines and Market Feasibility

Penske, just like the State of California, is committed to achieving a zero-emission future. The trials and errors that will inevitably result from the deployment of first-generation vehicle and charging technologies will offer many lessons from which we will learn. Based on our experience with real-world rollouts, Penske is concerned about how the ACF rule will succeed if it does not allow exemptions to account for manufacturer interruptions, delays in technological development, and the negative impacts of infrastructure availability on purchasing timelines or vehicle operations.

During the initial March 2021 workshops, CARB staff indicated it was examining exemptions based on the Innovative Clean Transit (ICT) zero-emission rule, including exemptions/delays for commercial feasibility, delivery delays, and infrastructure setbacks. However, the draft rule language released in August 2021 narrowed exemptions to only backup vehicles and cases of limited range. This is problematic as range is not the only, or even the primary, feasibility challenge. The list of feasibility challenges includes, but is not limited to:

- Energy drain due to hours of operation, duty cycle, or TRU and PTO use;
- Additional weight of electric vehicles leading to the need for a fleet expansion/additional VMT to deliver the same cargo;
- Vehicle availability that doesn't align with lifts, body upfits, or other highly specialized commercial vehicle specifications; and
- Vehicle availability resulting from manufacturer(s) inability to produce the requisite number of vehicles.

Each of these challenges has immense implications on the suitability of available commercial technology for any specific fleet. And yet, ACF provides no avenues to apply for and receive exemptions based on any of these real-world challenges. CARB also puts the onus on individual fleets to document 30 days of individual vehicle problems, and then complete and document non-responsive bids for ZEV and NZEV technologies. This approach essentially requires every fleet to recreate the wheel for exemptions that likely apply across entire operational sectors and requires CARB staff to individually review and approve each specific vehicle exemption. Given the scope of this transformative rule and the practical availability of applicable products from manufacturers during early year ramp ups, the administrative challenges and potential delays could overwhelm CARB staff resources and fleet planning abilities. Market clarity and streamlined, equitable processes are vital to success of this rollout. Thus, we ask CARB to broaden its exemptions and centralize and streamline the process across operationally similar vehicle types and use cases.

Penske is also concerned about the lack of an infrastructure delay provision, and the misalignment of vehicle purchases to real-world infrastructure availability. Vehicles purchased without adequate charging capability are stranded assets costing hundreds of thousands of dollars a piece that may sit idle for months or years. These vehicles not only represent significant capital losses, but also force fleets to forego purchases of more appropriate newer vehicles that would maximize efficiency for the fleet and emission reductions for the state. Infrastructure development timelines for fleet-scale facilities can take several years for land acquisition, utility upgrades, equipment purchases, and construction. Timing of vehicle purchases, deliveries, and infrastructure installation is complex, and no state or nation has ever undertaken a complete transition to zero-emissions. Delays and challenges will be inevitable as the California economy works through the growing pains of electrification at-scale.

Penske is concerned that this ambitious, market-disrupting rule does not include exemptions for fleets and companies that are actively working towards compliance while facing yet-unknown delays. Any effective ACF rule structure must account for temporary exemptions based on infrastructure or manufacturer delays.

IV. Conclusion

Penske has and will continue to partner with state regulators, local agencies, and fleets throughout California to implement zero-emission truck projects. We believe our experience will support CARB's goals by enabling more rapid rollouts of ZEVs via lower-risk leasing, maintenance, outsourcing, and charging efforts. These market-leading efforts will also help define and refine secondary market pathways, residual value calculations, and long-term maintenance planning. We will follow up with staff directly to share our experiences around technology, infrastructure, operations, and reporting to help support an efficient and effective transition to ZEVs in California.

Thank you for this opportunity to contribute to the development of a successful Advanced Clean Fleet rule. We look forward to engaging with CARB on the issues raised herein.

Sincerely,

Art Vallely

Art Vallely
President