

WANGER JONES HELSLEY PC
ATTORNEYS

OLIVER W. WANGER
TIMOTHY JONES*
MICHAEL S. HELSLEY
RILEY C. WALTER
PATRICK D. TOOLE
SCOTT D. LAIRD
JOHN P. KINSEY
KURT F. VOTE
TROY T. EWELL
JAY A. CHRISTOFFERSON
MARISA L. BALCH
AMANDA G. HEBESHA**
PETER M. JONES†
JEFFREY B. PAPE†
DEBORAH K. BOYETT
STEVEN K. VOTE
NICOLAS R. CARDELLA
GIULIO A. SANCHEZ
KATHLEEN D. DEVANEY
BENJAMIN C. WEST
HUNTER C. CASTRO
STEPHANIE M. HOSMAN
RACHEL L. POMBO
NATHAN J. MARTIN
COLTEN D. BALLINGER

265 E. RIVER PARK CIRCLE, SUITE 310
FRESNO, CALIFORNIA 93720

MAILING ADDRESS
POST OFFICE BOX 28340
FRESNO, CALIFORNIA 93729

TELEPHONE
(559) 233-4800
FAX
(559) 233-9330



CLOVIS OFFICE:
642 Pollasky Avenue
Suite 100
Clovis, California 93612

OFFICE ADMINISTRATOR
LYNN M. HOFFMAN

Writer's E-Mail Address:
jkinsey@wjhattorneys.com

Website:
www.wjhattorneys.com

* Also admitted in Washington
** Also admitted in Idaho
† Of Counsel

August 21, 2023

VIA ELECTRONIC SUBMISSION AND UNITED STATES MAIL

Clerk's Office
CALIFORNIA AIR RESOURCES BOARD
1001 "I" Street
Sacramento, CA 95814

**Re: Comments on Proposed Advanced Clean Fleets Regulation
Second Notice of Public Availability of Modified Text and
Availability of Additional Documents**

Dear Clerk to the California Air Resources Board:

On behalf of Western States Trucking Association ("WSTA"), I am submitting the following comments on the Advanced Clean Fleets Regulation in response to the Second Notice of Public Availability of Modified Text and Availability of Additional Documents (the "Second 15-Day Notice").

**A. By Including Additional Responses to Environmental Comments,
CARB is Engaging in *Post Hoc* Environmental Review, in Violation of
CEQA**

As the Supreme Court explained in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 "[a] fundamental purpose of an EIR is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post-approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken." (*Id.* at 394; see *No*

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California Air Resources Board

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Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 79; CEQA Guidelines, § 15004, subd. (a) ["Before granting any approval of a project subject to CEQA, every lead agency . . . shall consider a final EIR . . ."] [emphasis added].) Moreover, the timing requirement set forth in Section 15004 of the CEQA Guidelines "applies to the environmental review documents prepared by [C]ARB . . . in lieu of an EIR." (*POET, LLC v. Calif. Air Res. Bd.* (2013) 218 Cal.App.4th 681, 716.)

WSTA recently filed a writ petition challenging the ACF Regulation, which among other things asserts that CARB violated CEQA by failing to perform a lifecycle analysis of GHG emissions associated with the ACF Regulation. CARB is now attempting to impermissibly bolster the record—after the approval of the ACF Regulation—by including supplemental responses to comments made by WSTA in its comment letters, which were filed in a timely manner during the rulemaking process. These responses to WSTA's comments were never presented to CARB's governing board prior to their approval of the ACF Regulation.

As an initial matter, these responses are not properly part of the record for purposes of CEQA because they post-date CARB's approval of the project.

Moreover, while the Second 15-Day Notice asserts the lifecycle analysis was only generally alleged, this issue was a core issue in WSTA's October 17, 2022, comment letter; its second comment letter dated April 7, 2023; and the oral comments of its counsel to CARB's governing board on April 27, 2023. It is highly improper for CARB staff to backfill the record only after the governing board approved the project.

The new responses are also procedurally improper, and violate CEQA's prohibition of *post hoc* environmental review. Responses to environmental comments are a critical part of the CEQA process. The environmental review process must be complete before CARB approves a regulation. By failing to conclude the environmental review process before the final hearing on the ACF Regulation, CARB has violated CEQA. (See *POET, supra*, 218 Cal.App.4th at 716.)

In addition, the addition of responses to environmental comments cannot occur under CARB's certified regulatory program without conducting another hearing. Although CARB previously conducted a hearing and purportedly delegated the Executive Officer authority to respond to environmental comments, CARB's certified regulatory program makes plain that in such circumstances, there must be a subsequent hearing before the state board:

(6) Hearings. . . . If a state board hearing is held, the state board may vote on a resolution that directs staff to make direct changes or prepare written responses to environmental comments, and in such case ***shall*** direct staff to ***schedule a subsequent hearing*** for the state board's consideration of the final proposal for approval.

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(13 Cal. Code Regs., § 60004.2(b)(6) [emphasis added].) Because it appears CARB does not intend to schedule another state board hearing on the ACF Regulation, CARB has violated both CEQA and its CEQA regulations.

In short, CARB's attempt to bolster the CEQA record after the approval of the ACF Regulation violates the letter, the intent, and the spirit of CEQA, as well as CARB's own certified regulatory program.

B. CARB Staff Removed the Final Statement of Reasons (FSOR) from its Webpage During the Public Comment Period on the Second 15-Day Notice

WSTA notes that CARB has removed the FSOR (as well as the responses to comments on the EA) from the CARB website without explanation. This not only frustrates the ability of the public to provide full comment, but is an additional fact demonstrating the environmental review process has not been completed—notwithstanding the governing board's "approval" of the ACF Regulation at its April 27, 2023, meeting. This is also contrary to CARB's obligation to maintain a complete rulemaking file accessible to the public at all times. Even if CARB's governing board does not rehearing the ACF Regulation for approval, the removal of the FSOR from the CARB website is grounds to extend the comment period on the 15-day notice.

C. CARB Should Refile a Notice of Proposed Action on the Advanced Clean Fleets Regulation with the Office of Administrative Law (OAL) to Provide itself the Time Needed to Conduct Another Hearing on the Advanced Clean Fleets Regulation

Although CARB is attempting to re-open the record to provide a response to WSTA's lifecycle emissions concerns—an environmental issue CARB completely ignored during the rulemaking process—it is declining to conduct another hearing before the governing board as required under 13 Cal. Code Regs., § 60004.2(b)(6).

CARB is likely taking this position because its deadline to file the Advanced Clean Fleets regulation with OAL is September 1, 2023. Specifically, WSTA understands that CARB requested withdrawal of the Advanced Clean Fleets Regulation from OAL on July 26, 2023. (See **Exhibit "A."**) Unlike advance decisions from OAL, a voluntary withdrawal of a regulation does not afford an applicant an additional 120-days to refile with OAL. This is because an extra 120-days can only be provided when CARB receives a written opinion from OAL about the problems it sees with the regulation. (Govt. Code, §§ 11349.4, subd. (a).) Because that did not occur, CARB is required to file with OAL on or before September 1, 2023. (*Cf.* OAL Regulatory Notice Register, Notice File No. Z2022-0816-04.) Because this does not afford CARB sufficient time to conduct the public hearing required under Section 60004.2(b)(6) due to its response to WSTA's comments on lifecycle emissions, CARB must instead issue a new Notice of Proposed Action.

WANGER JONES HELSLEY PC

Clerk's Office

California Air Resources Board

August 21, 2023

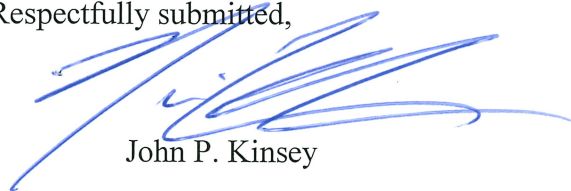
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D. If CARB Reopens the Record to Accept Supplemental Information from Staff, it Should Likewise Accept Environmental Comments from the Public

CARB may not, on the one hand, reopen the record—after project approval—to respond to environmental comments it neglected to address during the public comment period, while at the same time asserting this “does not mean that CARB is opening a new CEQA comment period for this rulemaking action.” (See 15-Day Notice at 23.) WSTA believes CARB’s new responses to comments are inappropriate; however, to the extent CARB contends it has the opportunity to augment the record after project approval, the public should likewise be afforded the opportunity to add substantive environmental comments and evidence to the record. To this end, WSTA would like to provide further evidence to CARB and OAL that has recently arisen further demonstrating the fact that the Advanced Clean Fleets Regulation will have profound negative consequences to California residents and businesses. For instance, WSTA has expressed concern that CARB is seeking to undermine recent investment in proven clean technologies such as renewable natural gas (RNG) while favoring unproven technologies that will rely on California’s already overtaxed electricity grid. Since the last public hearing in April 2023, there have been numerous additional widely publicized examples of electric truck batteries combusting, creating a safety hazard for truckers and the general public, additional emissions, and a massive financial burden on the first responders and the regulated community. (See **Exhibit “B.”**) At the same time, California’s electricity grid has remained unreliable. (See **Exhibit “C.”**) CARB should not be adding further demand to the grid when Governor Newsom only recently asked California residents and businesses to “double down on conserving energy to reduce the unprecedented strain on the grid,” proclaiming “[w]e need everyone—individuals, businesses, *the state* and energy producers—to do their part in the coming days and help California continue to meet this challenge.” (*As Record Heat Wave Intensifies, Governor Newsom Extends Emergency Response to Increase Energy Supplies and Reduce Demand* (September 6, 2022).)¹

Thank you for your consideration of these comments.

Respectfully submitted,



John P. Kinsey

cc: Kevin D. Hull (via email: kevin.hull@oal.ca.gov)
Eric Partington (via email: Eric.Partington@oal.ca.gov)

Enclosures

¹ Available at: <https://www.gov.ca.gov/2022/09/06/as-record-heat-wave-intensifies-governor-newsom-extends-emergency-response-to-increase-energy-supplies-and-reduce-demand/#:~:text=We%20all%20have%20to%20double.continue%20to%20meet%20this%20challenge.%E2%80%9D>

EXHIBIT “A”

From: Hull, Kevin@OAL
To: Bechtold, Bradley@ARB; Partington, Eric@OAL
Cc: Cecere, Ian@ARB; Wang, Alex@ARB; Hults, David@ARB; Brasil, Tony@ARB
Subject: RE: Advanced Clean Fleets - 2023-0613-02S S
Date: Wednesday, July 26, 2023 10:28:06 AM
Attachments: [image002.png](#)
[image003.jpg](#)

Thank you for your email.

This will confirm that the above-referenced rulemaking submission has been formerly withdrawn from OAL review. A formal Notice of Withdrawal will be sent out shortly.

Thank you, and please do not hesitate to contact OAL if you have any questions.

Regards,

Kevin D. Hull, Attorney IV
Office of Administrative Law

Organization Title



300 Capitol Mall, Suite 1250, Sacramento, CA 95814
P 916.323.8916 F 916.323.6826 E kevin.hull@oal.ca.gov

From: Bechtold, Bradley@ARB <Bradley.Bechtold@arb.ca.gov>
Sent: Wednesday, July 26, 2023 10:21 AM
To: Hull, Kevin@OAL <Kevin.Hull@oal.ca.gov>; Partington, Eric@OAL <Eric.Partington@oal.ca.gov>
Cc: Cecere, Ian@ARB <Ian.Cecere@arb.ca.gov>; Wang, Alex@ARB <alex.wang@arb.ca.gov>; Hults, David@ARB <David.Hults@arb.ca.gov>; Brasil, Tony@ARB <Tony.brasil@arb.ca.gov>
Subject: RE: Advanced Clean Fleets - 2023-0613-02S S

Good morning,
CARB formally requests withdrawal of the Advanced Clean Fleets Regulation, OAL file number 2023-0613-02S S.

Bradley Bechtold
Regulations Coordinator - (279) 208-7266
Board Administration and Regulatory Coordination Unit

CARB_H_logo



Please note my new schedule: Monday – Friday, 7:30 a.m. – 4 p.m.

From: Bechtold, Bradley@ARB
Sent: Tuesday, July 25, 2023 4:56 PM
To: Hull, Kevin@OAL <Kevin.Hull@oal.ca.gov>; Partington, Eric@OAL <Eric.Partington@oal.ca.gov>
Cc: Cecere, Ian@ARB <Ian.Cecere@arb.ca.gov>; Wang, Alex@ARB <alex.wang@arb.ca.gov>; Hults, David@ARB <David.Hults@arb.ca.gov>; Brasil, Tony@ARB <Tony.brasil@arb.ca.gov>
Subject: RE: Advanced Clean Fleets - 2023-0613-02S S

Kevin, Eric,
Please disregard the withdrawal issued earlier. I will follow-up in the morning.

Bradley Bechtold

Regulations Coordinator - (279) 208-7266
Board Administration and Regulatory Coordination Unit

CARB_H_logo



Please note my new schedule: Monday – Friday, 7:30 a.m. – 4 p.m.

From: Bechtold, Bradley@ARB
Sent: Tuesday, July 25, 2023 4:30 PM
To: Hull, Kevin@OAL <Kevin.Hull@oal.ca.gov>; Partington, Eric@OAL <Eric.Partington@oal.ca.gov>
Cc: Cecere, Ian@ARB <Ian.Cecere@arb.ca.gov>; Wang, Alex@ARB <alex.wang@arb.ca.gov>; Hults, David@ARB <David.Hults@arb.ca.gov>; Brasil, Tony@ARB <Tony.brasil@arb.ca.gov>
Subject: RE: Advanced Clean Fleets - 2023-0613-02S S

Hey Kevin,
Would you mind processing the withdrawal tomorrow morning?

Bradley Bechtold

Regulations Coordinator - (279) 208-7266
Board Administration and Regulatory Coordination Unit

CARB_H_logo



Please note my new schedule: Monday – Friday, 7:30 a.m. – 4 p.m.

From: Hull, Kevin@OAL <Kevin.Hull@oal.ca.gov>
Sent: Tuesday, July 25, 2023 4:24 PM
To: Bechtold, Bradley@ARB <Bradley.Bechtold@arb.ca.gov>; Partington, Eric@OAL <Eric.Partington@oal.ca.gov>
Cc: Cecere, Ian@ARB <Ian.Cecere@arb.ca.gov>; Wang, Alex@ARB <alex.wang@arb.ca.gov>; Hults, David@ARB <David.Hults@arb.ca.gov>; Brasil, Tony@ARB <Tony.brasil@arb.ca.gov>
Subject: RE: Advanced Clean Fleets - 2023-0613-02S S

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for your email.

This will confirm that the above-referenced rulemaking submission has been withdrawn from OAL review. A formal Notice of Withdrawal will be sent out shortly.

Thank you, and please do not hesitate to contact OAL if you have any questions.

Regards,

Kevin D. Hull, Attorney IV
Office of Administrative Law

Organization Title



300 Capitol Mall, Suite 1250, Sacramento, CA 95814
P 916.323.8916 F 916.323.6826 E kevin.hull@oal.ca.gov

From: Bechtold, Bradley@ARB <Bradley.Bechtold@arb.ca.gov>

Sent: Tuesday, July 25, 2023 4:13 PM

To: Partington, Eric@OAL <Eric.Partington@oal.ca.gov>; Hull, Kevin@OAL <Kevin.Hull@oal.ca.gov>

Cc: Cecere, Ian@ARB <Ian.Cecere@arb.ca.gov>; Wang, Alex@ARB <alex.wang@arb.ca.gov>; Hults, David@ARB <David.Hults@arb.ca.gov>; Brasil, Tony@ARB <Tony.brasil@arb.ca.gov>

Subject: Advanced Clean Fleets - 2023-0613-02S S

Good afternoon,

CARB requests to withdraw the Advanced Clean Fleets Regulation, 2023-0613-02S S, Regular Rulemaking file from OAL.

Thank you so much for your help.

Regards,

Bradley Bechtold

Regulations Coordinator - (279) 208-7266

Board Administration and Regulatory Coordination Unit

CARB_H_logo



Please note my new schedule: Monday – Friday, 7:30 a.m. – 4 p.m.

EXHIBIT “B”



Air Resources Regulatory Experts

August 21, 2023

John P. Kinsey
Nicolas Cardella
Wanger Jones Helsley PC
265 E. River Park Cir., Suite 310
Fresno, CA 93720

**Ref: Technical Exhibit B: Response to Environmental Assessment (EA)
Comments for the Advanced Clean Fleets Regulation (Second 15-Day Notice,
Posted on August 4, 2023)**

Dear Mr. Kinsey and Mr. Cardella:

CleanFleets.net provides the attached comments in our capacity as an advisor to truck fleet owners affected by CARB regulations. As Director, I have served the trucking industry since the CARB Diesel Risk Reduction Plan adoption in Year 2000 and have participated in the CARB zero emission (ZE) truck process since 2016. Our firm currently serves more than 100 trucking fleets with consulting services relating to CARB regulatory compliance and routinely monitors the national and international technical reports and media coverage relating to vehicle fuels and propulsion systems.

The EA for this regulatory effort is incomplete for the reasons noted herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Edgar".

Sean Edgar
Director
CleanFleets.net

cc: Lee Brown, Western States Trucking Association
Mike Lewis, Construction Industry Air Quality Coalition

Attachment: "CLEAN FLEETS EXHIBIT RELATING TO ELECTRIC VEHICLE BATTERIES,"
August 21, 2023"

CLEAN FLEETS EXHIBIT RELATING TO ELECTRIC VEHICLE BATTERIES

August 21, 2023

1. CARB's EA is incomplete and inadequate in its analysis of electric vehicle battery systems safety and environmental impacts. New information since the April 14, 2023 Final EA was published appears below and is not consistent with the conclusions of the EA and must be considered under CEQA.

As stated in the EA:

“The likelihood to overheat or ignite is increased if the batteries are poorly packaged, damaged or exposed to a fire or a heat source. ***However, when packaged and handled properly, lithium batteries pose no environmental hazard (79 Fed. Reg. 46011, 46032), and therefore no increased demand on public services related to emergency responders is anticipated.***

[Emphasis, mine]. Further, these impacts are largely associated with the use and production of lithium-ion batteries used in consumer products as compared to lithium-ion storage batteries.”¹

This information is widely available in the public domain. [Note to the reader: ***Emphasis*** has been added in bold and italics to highlight statements that are not consistent with the EA.]

- A. April 20, 2023, CNBC News: *Ford F-150 Lightning fire footage highlights a growing EV risk.*
 - “Automakers are spending billions of dollars to electrify their lineups. ***However, there’s been little to no discussion about first responder training for when the vehicles catch fire, whether due to a malfunction or, more commonly, a crash.***”
 - “Lithium-ion batteries, commonly used in EVs, can be volatile and extremely difficult to put out once on fire. “We’re not putting this f---er out. Look at it,” said one responding officer during the February F-150 Lightning fire. ***First responders can be heard on video expressing concern about how much water is needed to put out EV fires and whether a special foam would be required. They also questioned the viability and safety of electric vehicles.*** “They have to put like a whole f---ing lake on it to put them out,” the same officer said...”

¹ Final Environmental Analysis, April 14, 2023, p. 69

- "Firefighters increasingly are facing the challenges created by EV fires. ***This is made more complicated by what some experts say is a lack of regulations and standards, which allows automakers to do as they like regarding the design and rollout of EVs.***"²

B. June 6, 2023, Elektrek, Mill Valley, CA: Rivian electric pickup caught fire while charging at Electrify America station

- But electric vehicle fires can still happen, and sometimes they are worth noting as they have at times been traced back to battery problems leading to recalls, like in the case of the Chevy Bolt EV or, more recently, the Jaguar I-Pace.
- Now we have learned of a Rivian R1T electric pickup truck catching on fire while charging at an Electrify America station in Mill Valley, California, last night.
- Interestingly, the battery pack doesn't appear to be the problem here, but ***the damage indicates that the fire may have started around the charge port of the vehicle***, which is located on the front driver side.³

C. July 24, 2023, ABC News, Phoenix, AZ: *An electric semi-truck reignited at a Phoenix Nikola facility Sunday afternoon, **one month after the original fire.***

- "According to the Phoenix Fire Department, the battery cells were burning at over 800 degrees. Crews applied hundreds of gallons of water per minute to "change the chemical reaction by cooling the battery compartment. Officials say the semi-truck involved in the fire experienced ""another thermal runaway and ignition of the battery cells located in the vehicle."
- Officials say crews arrived at the facility near 40th Street and Broadway Road around 2 p.m. ***and found one of the previously burned semi-trucks on fire.***"⁴

² <https://www.cnn.com/2023/04/20/f-150-lightning-fire-footage-growing-ev-risk.html>

³ <https://electrek.co/2023/06/06/rivian-electric-pickup-caught-fire-while-charging-electrify-america-station/>

⁴ <https://www.abc15.com/news/region-phoenix-metro/south-phoenix/electric-semi-truck-reignited-at-phoenix-nikola-property>

- D. August 3, 2023, Associated Press, The Netherlands: *A car-carrying ship that burned for a week on the North Sea is towed to a Dutch port for salvaging.*
- “The **ship with 3,784 new vehicles, including 498 electric ones, on board caught fire on July 25** while traveling from the German port city of Bremerhaven to Singapore.”
 - “The fire on the Fremantle Highway burned out of control for a week as it floated near busy North Sea shipping lanes and the shallow Wadden Sea, a UNESCO World Heritage-listed migratory bird habitat. **Dutch authorities did not attempt to spray water onto the ship for fear of making it unstable.**”⁵
- E. August 15, 2023, CBS News: *Lithium-ion battery fires from electric cars, bikes and scooters are on the rise. Are firefighters ready?*
- “The rechargeable batteries that power common items like e-bikes, scooters and electric cars can pose a dangerous new threat to firefighters. They burn hotter and longer — **and many fire departments may be unprepared to tackle them....**”
 - **Lithium-ion battery fires caused at least 20 deaths and more than 300 injuries in New York City and San Francisco since 2019.**”⁶
 - Another danger to first responders comes when thermal runaway doesn't result in fire but instead **causes a phenomenon known as "off-gassing."** ““They didn't see any flames. The problem with this was a buildup of combustible gases inside the garage and started coming into the house,” said Doug Saba, deputy fire marshal for Mountain View Fire Rescue. “That happens a lot with batteries, lithium-ion batteries that fail. **And they fail because there's either a manufacturer defect or something damages those batteries causing that.** It could be an electrical short.”

⁵ <https://apnews.com/article/cargo-ship-cars-fire-towed-netherlands-port-93134c6e82af5cb8c3963ca85b9eace0>

⁶ <https://www.cbsnews.com/news/lithium-ion-battery-fires-electric-cars-bikes-scooters-firefighters/>

EXHIBIT “C”



Air Resources Regulatory Experts

August 21, 2023

John P. Kinsey
Nicolas Cardella
Wanger Jones Helsley PC
265 E. River Park Cir., Suite 310
Fresno, CA 93720

Ref: Technical Exhibit C: Response to Environmental Assessment (EA) Comments for the Advanced Clean Fleets Regulation (Second 15-Day Notice, Posted on August 4, 2023)

Dear Mr. Kinsey and Mr. Cardella:

CleanFleets.net provides the attached comments in our capacity as an advisor to truck fleet owners affected by CARB regulations. As Director, I have served the trucking industry since the CARB Diesel Risk Reduction Plan adoption in Year 2000 and have participated in the CARB zero emission (ZE) truck process since 2016. Our firm currently serves more than 100 trucking fleets with consulting services relating to CARB regulatory compliance and routinely monitors the State's energy grid, needed upgrades and cost to consumers.

The EA for this regulatory effort is incomplete for the reasons noted herein.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Edgar", is placed below the word "Sincerely,".

Sean Edgar
Director

cc: Lee Brown, Western States Trucking Association
Mike Lewis, Construction Industry Air Quality Coalition

Attachment: "CLEAN FLEETS EXHIBIT RELATING TO THE CALIFORNIA ELECTRIC GRID," August 21, 2023"

CLEAN FLEETS EXHIBIT RELATING TO THE CALIFORNIA ELECTRIC GRID

August 21, 2023

1. CARB's analysis of electricity supply and infrastructure to support light, medium and heavy-duty vehicles is woefully inadequate.

Three excerpts from the EA are provided below and each is addressed in the same order in “A”, “B” and “C” below:

“The electricity needed to power ZEV and PHEVs ***can be provided*** by California’s electricity grid or a compliant distributed generation power source.”¹ [Emphasis, mine].

“Where there are situations with substantial electrical loads, distributed generation resources, ***or lithium-ion storage batteries could be relied on during periods when total demand is high*** and the energy grid is experiencing peak levels of demand. The potential ***stresses on the electric grid resulting from implementation of the Proposed Program could be avoided*** through asset management, system design practices, and managed charging to shift a significant amount of the load away from system peaks.”² [Emphasis, mine].

“Through the increased use of ***highly efficient ZEVs*** powered by an increasingly more renewable energy grid, ***implementation of the Proposed Program would improve the efficiency of energy usage*** across the State.” [Emphasis, mine].³

This information is widely available in the public domain. [Note to the reader: ***Emphasis*** has been added in bold and italics to highlight statements that are not consistent with the EA.]

- A. January 17, 2023, CalMatters.org: *Race to zero: Can California’s power grid handle a 15-fold increase in electric cars?*⁴
 - “Despite expecting 12.5 million electric cars by 2035, California officials insist that the grid can provide enough electricity. But ***that’s based on multiple assumptions — including building solar and wind at almost five times the pace of the past decade — that may not be realistic.***”

¹ Final Environmental Analysis, April 14, 2023, p. 39

² Ibid., p. 55

³ Ibid., p. 57

⁴ <https://calmatters.org/environment/2023/01/california-electric-cars-grid/>

- To support electricity demand, **“Increase electricity production by up to 42% in 2035 and, under a recent scenario, as much as 85% in 2045, according to California Energy Commission estimates.** Generation capacity — the maximum that must be installed to meet demand throughout a given year — would need to triple by 2045.”
- ““We’re going to have to expand the grid at a radically much faster rate,” said David Victor, a professor and co-director of the Deep Decarbonization Initiative at UC San Diego. “This is plausible if the right policies are in place, **but it’s not guaranteed. It’s best-case.**” Yet **the Energy Commission has not yet developed such policies or plans,** drawing intense criticism from energy experts and legislators. **Failing to provide enough power quickly enough could jeopardize California’s clean-car mandate** — thwarting its efforts to combat climate change and clean up its smoggy air.
- Clean Fleets observations: The CARB EA position that electricity “can be provided” is not supported by evidence in the record, but is **simply wishful thinking on which compliance certainty for truckers is not reasonable.**

B. March 30, 2023, Network World: *Data center fires raise concerns about lithium-ion batteries*

- “Fire is to blame for a small but significant number of data-center outages including a March 28 fire that caused severe damage to a data center in France, and **an analysis of global incidents highlights ongoing concerns about the safety of lithium-ion batteries and their risk of combustion.**”
- The use of lithium ion (Li-ion) batteries in data centers is growing. **Now commonly used in uninterruptible power supplies, they are expected to account for 38.5% of the data-center battery market by 2025, up from 15% in 2020,** according to consulting firm Frost & Sullivan.
- Clean Fleets observations: The CARB EA position that **“lithium-ion storage batteries could be relied on during periods when total demand is high,”** would seem to encourage the use of these storage batteries in fixed locations like data centers. The EA claims that, **“when packaged and handled properly, lithium batteries pose no environmental hazard (79 Fed. Reg. 46011, 46032),”** yet the fire potential has not been fully analyzed by the EA. **On the contrary the fire risk associated with storage batteries is downplayed by the EA and is grossly misrepresented,** “[f]urther, these impacts [i.e. environmental hazard] are largely associated with the use and production of lithium-ion batteries used in consumer products **as**

compared to lithium-ion storage batteries.”⁵ As illustrated by the oxygenated fuels (“MTBE”) catastrophe of the 1990’s, ***CARB and CalEPA should never again underestimate the environmental damage that can be caused by a perhaps well-intentioned air pollution program endangering the public.***⁶

C. July 2023, Manhattan Institute, *“Electric Vehicles for Everyone? The Impossible Dream”*

- “Shifting the primary energy for mobility from liquids to electrons sounds efficient, but it constitutes a degradation in convenience and an increase in costs for delivering energy. Counterintuitively, at big energy levels, transporting a unit of electrical energy using wires and transformers is about 20-fold more expensive than transporting the same quantity of energy as oil in pipelines and tanks. That gap remains wide, even adjusted for the fact that one-half to one-third as much energy is transported to EVs because of the higher efficiency of electric motors over engines. And the math for convenient electric fueling economics makes it worse”⁷
- Clean Fleets observations:
 - The CARB EA position that, ***“highly efficient ZEVs”*** meet the duty cycle requirements of High Priority Fleets is contravened by the written and oral testimony of the manufacturers of zero emission trucks themselves. For example, “The ISOR does not explain why only emergency vehicles, and not any other configurations, must be afforded an exemption. It also does not assess the potential unintended negative consequence of trucking fleets maintaining their existing vehicles longer if ZEVs cannot meet the needs of their specific operation.”⁸
 - The CARB EA position that the ACF, ***“would improve the efficiency of energy usage*** across the State,” is without basis and a weak argument given the demonstrated failure of the existing grid to support all the ZEVs on the road today, let alone the massive generation and transmission that is not adequately described in the EA.

⁵ Final Environmental Analysis, April 14, 2023, p. 69

⁶ <https://abc7news.com/archive/7286029/>

⁷ Manhattan Institute, p. 28 accessed at <https://manhattan.institute/article/electric-vehicles-for-everyone-the-impossible-dream>

⁸ <https://www.arb.ca.gov/lists/com-attach/277-acf2022-ADJWYFRnWDIRCAk4.pdf> at p. 3