

Proposed

State of California
Air Resources Board

**Electrify America Cycle 3 Zero Emission
Vehicle Investment Plan**

Resolution 21-14

June 24, 2021

Agenda Item No.: 21-5-2

Whereas, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

Whereas, on October 25, 2016, the United States District Court for the Northern District of California approved the 2.0-liter Partial Consent Decree between the United States Department of Justice, the United States Environmental Protection Agency, the State of California, by and through the California Air Resources Board and the Attorney General of the State of California, and Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC (collectively, Volkswagen or VW) for violations of federal and State laws and regulations by VW in regard to its 2.0-liter diesel engine vehicles;

Whereas, Appendix C of the 2.0-liter Partial Consent Decree (Appendix C) requires VW, or a subsidiary thereof, to spend \$800 million over ten years in California on eligible zero-emission vehicle (ZEV) investments (ZEV Investment Commitment) through the implementation of four California ZEV investment plans, each covering a period of 30 months, approved by CARB, consistent with the goals and terms of the 2.0-liter Partial Consent Decree;

Whereas, Appendix C requires VW, or a subsidiary thereof, to submit a separate draft ZEV investment plan for each of the four 30-month cycles to CARB for approval, in whole or in part, consistent with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 1.10.1-1.10.4, 3.1, 3.3.1, 3.3.2, 3.3.2.1-3.3.2.11, and 3.3.3, and Appendix C-1;

Whereas, on June 27, 2017, the California Legislature added section 39614 to the Health and Safety Code, which provides legislative direction that CARB should strive to ensure in implementing Appendix C;

Whereas, Health and Safety Code section 39614, subdivision (b)(1), requires CARB to strive to ensure that investments made pursuant to Appendix C of the 2.0-liter Partial Consent Decree are aligned with the State's priorities before approval of the investment plan;

Whereas, Health and Safety Code section 39614, subdivision (b)(1), requires CARB to strive to ensure that investments made pursuant to Appendix C of the 2.0-liter Partial Consent Decree provide for public transparency before approval of the investment plan;

Whereas, Health and Safety Code section 39614, subdivision (c)(1)(A), requires the Board, in approving each investment plan, to strive to ensure, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, that at least 35 percent of the funds that will be invested under each investment plan benefit low-income or disadvantaged communities disproportionately affected by air pollution;

Whereas, Health and Safety Code section 39614, subdivision (c)(1)(B), requires the Board, in approving each investment plan, to strive to ensure, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, the periodic submission of progress reports to the Board on the implementation of the investment plan from VW or its subsidiary;

Whereas, Health and Safety Code section 39614, subdivision (c)(1)(B)(3), requires CARB to post each proposed investment plan for public comment;

Whereas, on July 27, 2017, via Board Resolution 17-23, the Board approved Electrify America's first ZEV investment plan (Cycle 1 Plan), including commitments from Electrify America that Electrify America will strive to ensure, to the maximum extent allowable under the Consent Decree, that (1) at least 35 percent of funds for the Cycle 1 Plan will benefit low-income or disadvantaged communities disproportionately affected by air pollution, and (2) Electrify America will provide written quarterly reports to CARB staff that can be made available to the public, and will discuss Cycle 1 Plan implementation with CARB at least monthly;

Whereas, on December 13, 2018, via Board Resolution 18-54, the Board approved Electrify America's second ZEV investment plan (Cycle 2 Plan), including commitments from Electrify America that Electrify America will strive to ensure, to the maximum extent allowable under the Consent Decree, that (1) at least 35 percent of funds for the Cycle 2 Plan will benefit low-income or disadvantaged communities disproportionately affected by air pollution, (2) Electrify America will provide written quarterly reports to CARB staff that can be made available to the

public, and (3) will discuss Cycle 1 and 2 Plan implementation with CARB at least monthly;

Whereas, Board Resolutions 17-23 and 18-54 also (1) called for brand-neutral awareness program materials to acknowledge hydrogen fuel cell electric vehicles, when appropriate, (2) required a minimum expenditure of \$1 million for community electric vehicle charging in approved metropolitan areas, (3) encouraged Electrify America to provide hiring opportunities for qualified residents of disadvantaged communities, and (4) required a future investment in a second Green City comprised primarily of disadvantaged communities;

Whereas, Board Resolutions 17-23 and 18-54 additionally directed CARB staff to consult with stakeholders, including environmental justice groups, labor organizations, auto manufacturers and other electric vehicle charging companies, to solicit comments to inform CARB staff's semi-annual reports to the Board regarding Electrify America's progress toward achieving the objectives of the 2.0-liter Partial Consent Decree;

Whereas, Electrify America, in implementing its Cycle 1 Plan, has focused on establishing the foundational infrastructure necessary to support the launch of a major charging station network, and establishing contracts with charging equipment manufacturers and installers, real estate partners, and education and awareness creative agency partners;

Whereas, Electrify America, in implementing its Cycle 2 Plan, has expanded investments in infrastructure to a variety of new use cases, providing access to ZEV infrastructure to a broad spectrum of consumers; invested in brand-neutral campaigns to increase ZEV education, awareness, and outreach; invested in materials and activities to boost utilization of Electrify America stations; and supported Green City investments made in Cycle 1;

Whereas, Electrify America has demonstrated that greater than 35 percent of the census tracts targeted for infrastructure investment under its Cycle 1 and Cycle 2 plans are in low-income or disadvantaged communities, that job creation activities for minority-, woman-, and veteran-owned businesses have commenced, and that Electrify America has met the meeting and reporting requirements established by the 2.0-liter Partial Consent Decree and agreed to and memorialized in Board Resolutions 17-23 and 18-54;

Whereas, on May 4, 2021, Electrify America submitted the third draft ZEV Investment Plan (Cycle 3 Plan), CARB posted this proposed Cycle 3 Plan for a public comment period of 25 calendar days, and CARB staff reviewed the proposed Cycle 3 Plan for compliance with the terms and goals of the 2.0-liter Partial Consent Decree, and for consistency with Health and Safety Code section 39614, subdivisions (b)(1) and (c)(1), and Board Resolutions 17-23 and 18-54;

Whereas, CARB staff conducted a public meeting on May 25, 2021 to solicit comments from stakeholders regarding Electrify America's progress toward achieving the objectives of the 2.0-liter Partial Consent Decree, and those comments have informed CARB staff's report to the Board;

Whereas, CARB staff reviewed all comments received on the proposed Cycle 3 Plan and provided a summary of the comments to the Board at the public June 24, 2021, Board hearing on the Cycle 3 Plan, as well as in its public staff analysis;

Whereas, CARB staff has reviewed the proposed Cycle 3 Plan for compliance with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 3.1, 3.3.2, 3.3.2.1-3.3.2.11, and 3.3.3, and with consideration, to the maximum extent allowable under the 2.0-liter Partial Consent Decree, of Health and Safety Code section 39614, subdivisions (b)(1) and (c), and the Board's direction to staff in Resolutions 17-11, 17-23, and 18-54, and CARB staff has determined that the proposed Cycle 3 Plan complies with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 3.1, 3.3.2, 3.3.2.1-3.3.2.11, and 3.3.3, and is consistent with Health and Safety Code section 39614, subdivisions (b)(1) and (c)(1), and Board Resolutions 17-11, 17-23, and 18-54;

Whereas, based on its review and determinations above, CARB staff recommends that the Board approve the proposed Cycle 3 Plan as the Cycle 3 ZEV Investment Plan;

Whereas, the Board has reviewed the Staff Analysis, particularly Table 1 of Section III of the Staff Analysis, "Assessment of the proposed Cycle 3 Plan," and the Board Presentation;

Whereas, the Board finds that:

Electrify America's proposed Cycle 3 Plan identifies how its proposed projects are anticipated to align with State priorities, and how it will provide for public transparency during the third 30-month cycle, and CARB has provided a public process before approval of the Cycle 3 Plan, all of which are consistent with Health and Safety Code section 39614, subdivision (b)(1);

Electrify America's proposed Cycle 3 Plan estimates that at least 35 percent of the funds it proposes to invest in the third 30-month cycle will be in low-income communities or disadvantaged communities disproportionately affected by air pollution, consistent with Health and Safety Code section 39614, subdivision (c)(1)(A);

Electrify America commits to providing CARB periodic updates as part of its proposed Cycle 3 Plan, consistent with Health and Safety Code section 39614, subdivision (c)(1)(B);

CARB has posted the proposed Cycle 3 Plan for public comment for 25 calendar days before this June 24, 2021, Board Hearing, providing for public transparency consistent with Health and Safety Code section 39614, subdivisions (b)(1) and (c)(3);

A public hearing has been held to approve the Cycle 3 ZEV Investment Plan according to the provisions of Health and Safety Code section 39614, subdivision (c)(2);

The Board has complied with Health and Safety Code section 39614, subdivisions (b)(1) and (c);

CARB staff has complied with the Board's direction in Resolutions 17-11, 1723, and 18-54;

The Cycle 3 Plan is consistent with CARB's environmental justice policies and does not disproportionately impact people of any race, culture, or income; and

The Cycle 3 Plan, as submitted on May 4, 2021, complies with the terms and goals of the 2.0-liter Partial Consent Decree, including Appendix C, paragraphs 1.9, 1.10, 3.1, 3.3.2, 3.3.2.1-3.3.2.11, and 3.3.3, as laid out in the Staff Analysis, particularly Table 1 of Section III of the Staff Analysis, "Assessment of the proposed Cycle 3 Plan," and the Board presentation, and is consistent with Health and Safety Code section 39614, subdivisions (b)(1) and (c)(1), and Board Resolutions 17-11, 17-23, and 18-54.

Now, therefore, be it resolved that the Board hereby approves the proposed Cycle 3 Plan, as submitted on May 4, 2021, as follows:

The Cycle 3 ZEV Investment Plan forms a complete body of terms for creditable spending in the third 30-month cycle, in the amount of \$200 million, and includes only the following types of projects and activities, with spending in the following estimated amounts, unless CARB agrees otherwise in writing;

- ZEV Infrastructure (\$127 million):
 - \$70-100 million for metropolitan areas in and surrounding Bakersfield, Fresno, Los Angeles-Long Beach-Anaheim, Oxnard-Thousand Oaks-Ventura, Riverside-San Bernardino, San Diego-Carlsbad, San Francisco-Oakland-Hayward, San Jose-Sunnyvale-Santa Clara, Santa Maria-Santa Barbara, Stockton, and Visalia,
 - A minimum of \$1 million will be spent in each metropolitan area for community electric vehicle charging investments, and
 - The spending amount will be similar to the gap analysis results in each metropolitan area.

- \$15-25 million for highways and regional routes,
- \$6-10 million for transit and medium-/heavy-duty fleet charging, and
- \$2-4 million for hardware development and capacity building;
- ZEV Education, Awareness, Access, and Outreach (\$28 million):
 - \$14 million directed to traditional and social media and marketing to increase public awareness of ZEVs and their benefits, and to overcome barriers to ZEV adoption,
 - \$2 million for incentives directed to support the use of ZEVs in the operation of transportation network companies; and
 - \$12 million directed to Electrify America branded marketing to further station utilization;
- \$25 million for Electrify America's second Green City, Long Beach/Wilmington, with an investment focus for ZEV technologies supporting transit and heavy-duty operations, including fueling infrastructure and energy storage; and
- Allowable overhead (up to \$20 million);

Electrify America, in implementing the Cycle 3 Plan, shall strive to ensure, to the maximum extent allowable under the Consent Decree, that at least 35 percent of Cycle 3 Plan funds benefit low-income communities and disadvantaged communities disproportionately affected by air pollution;

Awareness program materials will use a language other than English, when appropriate; and

Awareness program materials will be brand-neutral.

Be it further resolved that the Board expects VW, Electrify America, and any other entities implementing the ZEV Investment Commitment, as required under the 2.0-liter consent decree, to continue to:

Provide written quarterly reports to CARB staff that can be made available to the public on the Cycle 1, 2, and 3 Plans, provide annual reports to CARB on the Cycle 1, 2, and 3 Plans, as applicable and as required under the Consent Decree, and will discuss the implementation status of the Cycle 1, 2, and 3 Plans, as applicable, with CARB at least monthly;

Include in these quarterly and annual reports how much of the investment as a percentage of the total investment made under the Cycle 1, 2, and 3 Plans to date has been in disadvantaged and low-income communities, and a description of the census tracts in which they occurred;

In coordination with CARB, prepare and update a map of charging station investments installed under the Cycle 1, 2, and 3 Plans, including census tract specificity, as defined by CARB, and the location of other existing public

charging stations, as compiled on the Department of Energy's Alternative Fueling Station Locator maintained by the National Renewable Energy Lab;

Provide hiring opportunities for qualified residents of disadvantaged communities; and

Include, in Awareness Program materials under the Cycle 1, 2, and 3 Plans, an acknowledgement of hydrogen fuel cell electric vehicles, when appropriate.

Be it further resolved that the Board expects CARB staff to continue to:

Report to the Board at least twice a year on progress toward achieving the objectives of the Consent Decree, after consulting with stakeholders, including environmental justice groups, labor organizations, auto manufacturers, and other electric vehicle charging companies;

Ensure all implementation and crediting of expenditures under the Cycle 1, 2, and 3 Plans will be done consistent with the terms and goals of the 2.0-liter Partial Consent Decree, as documented by the independent auditor; and

Ensure any expenditures made on ZEV investment activities that are not approved by CARB and not consistent with the terms and goals of the 2.0-liter Consent Decree are not credited toward Volkswagen's \$800 million ZEV Investment Commitment.

Be it further resolved that for subsequent investment plans, the Board directs VW, Electrify America, and any other entities implementing the ZEV Investment Commitment, to the extent possible under the Consent Decree, to continue to:

Include additional detail and specifics in future Plan submittals, including on business plans, project descriptions, project partners, project timelines, and proposed project expenditures;

Strive to ensure that they spend at least 35 percent of the ZEV investments to benefit disadvantaged or low-income communities, in alignment with Electrify America's goals in its Cycle 1, 2, and 3 Plans, and that they draw from the experience from the Cycle 1 and 2 Plans, so that the Cycle 3 and future investment plans further increase the benefits to disadvantaged or low-income communities;

Strive to ensure that the investments realize anticipated benefits and services to funding recipients and users throughout the term of the 10-year investment commitment;

Include an evaluation of heavy-duty hydrogen opportunities in future investment plan submittals to CARB;

Include estimates for job creation and job training, especially for minority-, woman-, and veteran-owned businesses as part of the criteria for awarding contracts under future cycles, and explain the process for doing so in future investment plan submittals to CARB;

Implement and plan projects in a way that ensures fair competition in the zero-emission vehicle market, to ensure the market's long-term robustness, in this and future cycles;

Implement its projects over the ten-year period in a transparent manner that allows for public input; and

Execute the programs in a manner which ensures that all the investments are self-sustaining by the end of the ten-year Investment Commitment period, ensuring existence of the programs beyond the 10-year Investment Commitment period.

Be it further resolved that the Board further directs CARB staff to closely monitor and report on Electrify America's implementation progress, including by doing the following:

CARB staff will meet with Electrify America to discuss implementation progress at least monthly, and report back to the Board in the event there are any issues with Electrify America fully and effectively implementing either the Cycle 1, 2 or 3 Plans; and

CARB staff will prepare and update a report on its web site of how many of the charging stations installed by Electrify America are in census tracts with existing charging stations, including maps of where Electrify America's charging stations have been installed and identification of where existing public stations are located.