



Air Resources Board



Matthew Rodriguez
Secretary for
Environmental Protection

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Edmund G. Brown Jr.
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Sent via email and U.S. Mail

May 24, 2017

Mr. Mark McNabb
President and CEO
Electrify America
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Re: Volkswagen 2.0L October 2016, Appendix C California ZEV Investment Plan

Dear Mr. McNabb:

The California Air Resources Board (CARB) is eager to move forward with the first phase of investments in zero-emission vehicle (ZEV) infrastructure, education, and public access agreed to in the 2.0 liter Partial Consent Decree (Consent Decree). To that end, we want to highlight the areas we discussed at our April 27th meeting in which we need additional information from Electrify America, LLC, part of Volkswagen Group of America, in the ZEV Investment Plan (ZIP).

Background

A material term of the Consent Decree partially resolving California's claims for Volkswagen's violations of California's environmental and unfair business practice laws was Volkswagen's commitment to make \$800 million of ZEV-related investments over 10 years in California. The investments are intended to promote and advance the use of and access to ZEVs throughout California. (Appendix C, Consent Decree, ¶ 1.10). The investments are to be made in four \$200 million installments pursuant to investment plans—the ZIPs— submitted to CARB that cover periods not to exceed 30 months.

Appendix C to the Consent Decree (hereafter referred to only by specific ¶ number) requires that each ZIP submitted to CARB contain certain information. (¶ 3.3.2). It further requires the settling defendants to meet and confer with CARB to determine what additional information, other than the items specifically identified in Appendix C, should be included in the ZIP. (¶ 3.3.2). CARB is given the authority to review each ZIP and “may, in its discretion, approve or disapprove each plan in whole or in part.” (¶ 3.3.3).

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

In March 2017, Electrify America submitted a ZIP to CARB for review, including review by the public as required by Appendix C. (§ 3.3.1). The public input CARB received on the ZIP, including input from the California State Legislature, echoes the recommendations CARB communicated to Electrify America in its February Guidance Document. During the Board's March 24, 2017, public meeting in Riverside, Mr. Brendan Jones, Electrify America's Chief Operating Officer, provided comments and responded to questions about the ZIP from the Board. During his presentation, Mr. Jones reaffirmed Electrify America's interest in further advice and guidance from CARB staff and the Board as Electrify America continued to refine the ZIP.

Based on CARB's review of the ZIP, including consideration of comments by the public, we identify below the areas where Electrify America needs to (1) provide additional information to comply with Appendix C; (2) further explain how Electrify America will meet the goals of Appendix C; and (3) provide the information that CARB requested during the meet and confer process and pursuant to § 3.3.2, so that it may fully evaluate the ZIP.

To streamline CARB's review of changes to the ZIP, and as discussed during our April 27 meeting, CARB asks that Electrify America submit a ZIP Supplement that addresses the expectations outlined in this letter, in lieu of an amended ZIP. CARB understands that Electrify America has already begun work to supplement its ZIP to address some of the concerns outlined in this letter, as well as to be responsive to public input. We are confident that CARB and Electrify America can continue to work together to build on the ZIP and arrive at an approvable plan very soon. We share an interest in finding a way for Electrify America to move forward with implementing the investments outlined in Appendix C in a manner that achieves the goals of the Consent Decree, including benefitting communities, especially disadvantaged communities, throughout California.

The specific shortcomings and requests for additional information, analysis, and detail are described below.

Electrify America's Ten-Year Vision

Appendix C requires that the ZIP set forth the information and analysis required by paragraphs 3.3.2.1 – 3.3.2.11, including a description of all California ZEV Investments that defendants will make, measures to increase access in underserved areas, an explanation of how each investment makes progress toward and/or meets one or more of the goals identified, and an estimated schedule for implementing each investment. Electrify America has indicated that it is developing a 10-year vision for its ZEV activities, and it believes that its plans for this first ZIP fit into this larger picture.

Electrify America should more fully describe this 10-year vision, and how the investments proposed for the first 30-month investment cycle fit into this vision. We understand that your vision may change, particularly in light of changed circumstances or lessons learned from implementation of the first and later ZIPs, but a more detailed description of the long-term vision will assist CARB in its evaluation of this ZIP. Your description of the 10-year vision should include:

1. How this first spending cycle fits into Electrify America's overall vision for its ZEV investment and participation in California.
2. How the California ZIP fits into, and where appropriate complements or differs from, Electrify America's National ZIP.
3. How and why developing five major metropolitan areas first, and then subsequently expanding into other metropolitan areas (including expansion in disadvantaged/underserved communities), will progress.
4. How the ZIP, for the first spending cycle, lays a foundation to foster developments, technologies, and expanded coverage of disadvantaged/underserved communities in later spending cycles.

Investment in Disadvantaged/Underserved Communities

One of the goals of Appendix C is to increase access to ZEVs in underserved areas in California (§§ 3.3.2.1; 3.3.2.2) and the ZIP must explain how each California ZEV investment makes progress toward this goal (§ 3.3.2.2). Moreover, each Investment Plan must include measures to increase access in underserved areas (§ 3.3.2.1).

In the ZIP, Electrify America committed to investing in disadvantaged/underserved communities in California, and it provided information regarding the siting of certain investments in those communities using the CalEnviroScreen tool. While we appreciate this commitment and information, the ZIP Supplement should include more detail on this critical issue, including information on the additional steps that Electrify America will take to address this California ZEV investment goal. (See §§ 3.3.2.1; 3.3.2.2; 3.3.2.8; and 3.3.2.11). The ZIP Supplement should further describe how underserved/disadvantaged communities will benefit from this and subsequent ZIPs, including a more detailed discussion of how the elements in the ZIP will increase ZEV access in underserved/disadvantaged areas.

We also note that, in his testimony to the Board on March 24, Mr. Jones acknowledged that Electrify America planned to provide CARB with more information and analysis of how its proposed investments would strive to meet the 35-percent goal in ARB's Guidance Document (§ 3.3.2.11) to benefit disadvantaged communities. Further,

Mr. Jones described Electrify America's further and ongoing efforts to conduct a geospatial analysis of the locations of proposed investments, and the extent to which these investments will be located in areas that advance environmental justice goals. The results of this analysis should also be included in the ZIP Supplement.

Further, the ZIP Supplement should describe how the investments will contribute to the recommendations for addressing barriers to ZEVs for low-income residents in the recently identified areas of funding, awareness, and economic development.¹ Reduction of these barriers is important to Appendix C's goals of promoting and advancing the use and availability of ZEVs.

Specifically, the ZIP Supplement should include:

1. An estimated percentage of investments in disadvantaged/underserved communities for each spending category. This portion of the supplement should include information derived from Electrify America's geospatial analysis of its proposed investments and discuss both highway and non-highway charging infrastructure. CARB recommends that Electrify America make every attempt to attain investment of 35 percent of the first 30-month investment cycle funds in these communities. Electrify America should explain in more detail the positive impact it expects the investments to make in disadvantaged/underserved communities, and the efforts it will make to reach and exceed the 35 percent investment goal in subsequent investment cycle plans. Please include these details for each spending category (network DC fast chargers, community chargers, Green Cities, and ZEV Awareness).
2. A bilingual and culturally sensitive awareness campaign (including marketing materials) that will run in disadvantaged/underserved communities or in media that target or serve disadvantaged/underserved communities.
3. A discussion of Electrify America's commitment to gather statistics on resulting workforce training of and employment recruitment from disadvantaged/underserved communities served by ZIP implementation. Additionally, the ZIP Supplement should discuss Electrify America's willingness to include language in future contract Requests for Proposals that furthers equal opportunity and encourages the incorporation of training and employment of disadvantaged/underserved residents.

¹ CARB 2017 Low-income Barriers Study, Part B: Overcoming Barriers to Clean Transportation Access for Low-income Residents.

Transparency, Accountability and Coordination

Appendix C requires infrastructure spending to address an existing need or to support a reasonably anticipated need. (¶ 1.10.1). As CARB detailed in its February 2017 Guidance Document for the ZIP, California leads the nation in ZEV technology and implementation, and both the government and the private sector have made or plan to make significant ZEV investments in the state. It is therefore important that Electrify America explain in the ZIP how it has taken these existing and planned ZEV investments into consideration in the determination of whether its own investments address an existing need or support a reasonably anticipated need. (¶¶ 1.10.1; 3.3.2.11). The ZIP included some information on this topic, but CARB requests additional details as follows:

1. More information about Electrify America's planning partnership with state agencies that will include environmental justice representatives, electric utilities, and local agencies for the purpose of coordinating the process of siting and installing EV charger stations. The detail on the proposed planning partnership should include, among other things, a summary of discussions to date, goals and desired outcomes going forward, how Electrify America's projects will account for existing programs, and how planned infrastructure will complement rather than duplicate other infrastructure investments.
2. Specifics on key decisions and planning processes. For example, the EV charger gap analysis is mentioned with results provided, but the ZIP needs to include a broad description of the methodology. Further, please include more specific information on the Green City and major metropolitan area selection processes, as well as development of the awareness campaign.
3. Acknowledgment that Electrify America has received and read the public, Board, and stakeholder comments; a high-level description of how Electrify America considered the comments in drafting the ZIP Supplement; and a description of how Electrify America will continue to incorporate public feedback into its process moving forward.
4. A commitment to provide 6-month updates on implementation of the investment plan that can be posted to the Electrify America website, on the same timeline as the bi-annual meetings with CARB.

Brand-Neutral Education, Including Fuel Cell Vehicles

Appendix C requires brand neutral education and outreach to build and create public awareness of ZEVs which is defined in ¶ 1.9 to include both battery electric and fuel cell vehicles. Since investment education and outreach cannot favor vehicles or services offered by settling defendants (Volkswagen, Audi and Porsche, ¶ 1.10.2), educational

efforts cannot solely focus on battery electric vehicles to the exclusion of other ZEV technologies, including hydrogen fuel cell technology, used by some of its competitors.

The ZIP states that Electrify America may consider hydrogen in future Investment cycles. The ZIP Supplement should discuss:

1. Potential investment in hydrogen fueling stations over the 10-year investment period.
2. Heavy-duty hydrogen projects, such as freight fleet or shuttle programs, in this or future plans.
3. The potential for siting plazas that allow for both charging and hydrogen fueling stations, including planning elements such as permitting.

Creditable Costs and Other Data Requests

It is also important that Electrify America include the following in its ZIP Supplement:

1. Creditable Cost estimates broken out by the twelve required categories for the entire 30-month spending cycle, and for each spending category of projects. (§ 3.3.2.4).
2. A further description of Electrify America's structure and proposed business model, including answers to the following questions:
 - a. Who does Electrify America expect to own the capital investments, and who or what types of entities are expected to operate which services?
 - b. How will Californians be assured that as utilization of the charger network increases, non-VW vehicle users will not be priced out of using the network to ensure availability for VW vehicle users?
3. A commitment to provide CARB information and data regarding the cost, utilization, and performance of each of the approved projects within each eligible Investment category.
4. A description of how Electrify America will monitor and maintain each proposed ZEV Investment, including the establishment and declaration of:
 - a. Performance specifications and tracking metrics from all subcontractors and other service providers (in particular, for maintenance of infrastructure) (§ 3.3.2.10);
 - b. Level of service specifications for customer experience (such as customer "availability" or uptime statistics for EV Chargers). (§ 3.3.2.5); and
 - c. Programmatic outcomes that would be used to track efficacy of programs over time. For example, in the Awareness area, an increase in the percentage of Californians that are aware of ZEVs could be indicative of a positive programmatic outcome. (§ 3.3.2.2.)

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5. Timelines broken down into 6-month intervals for each proposed project.
(¶ 3.3.2.3).

ZIP and ZIP Supplement Process

In order to foster public understanding of the ZIP, CARB intends to make the ZEV Supplement available to the public. Pursuant to ¶ 3.3.1, we request that Electrify America also post the Supplement on its website. Based on CARB staff's review of both the March ZIP and the ZIP Supplement, CARB staff will make a recommendation regarding approval, in whole or in part.

We look forward to receiving a Supplement that responds to the critical issues outlined above. Once we have the supplement in hand, we can move expeditiously toward approval of a ZIP for the first investment cycle.

If you have any questions or need any additional information, please contact Alexandra Kamel, lead staff attorney for Appendix C, at (916) 445-5506 or Alexandra.Kamel@arb.ca.gov; Analisa Bevan, Assistant Division Chief, Emissions Compliance, Automotive Regulations and Science Division, at (916) 323-8966 or Analisa.Bevan@arb.ca.gov; or Joshua Cunningham, Branch Chief, Advanced Clean Cars Branch, at (916) 322-8261 or Joshua.Cunningham@arb.ca.gov.

Sincerely,



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