STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

CASE 18-E-0138 - Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure

COMMENTS OF EARTHJUSTICE, NATURAL RESOURCES DEFENSE COUNCIL AND SIERRA CLUB

Introduction

Earthjustice, the Natural Resources Defense Council, and Sierra Club respectfully submit these comments in response to the Notice Requesting Comments issued on August 30, 2022[1] in the above referenced docket. New York has committed to widespread electrification of all types of vehicles. Beginning in 2013 with its adoption of the Zero Emission Vehicle Memorandum of Understanding (ZEV MOU)–which committed the State to reach 850,000 zero emission vehicles on the road by 2025–New York has rapidly increased the ambition of its commitments. Following the passage of legislation and the adoption of California's Advanced Clean Trucks rule in 2021, and Governor Hochul's recent announcement that New York will adopt Advanced Clean Cars II, New York must reach 100 percent zero emission light-duty vehicle sales by 2035 and medium- and heavy-duty sales by 2045. Even to support New York's ZEV MOU goal of 850,000 vehicles, the state has projected that it needs 53,773 public L2 and 1,500 public DCFC plugs by 2025.[2] The State will have to support even greater levels of EV supply equipment (EVSE) installation to facilitate the ZEV deployment targets in the Climate Action Council's climate modeling, which shows that meeting the Climate Leadership and Community Protection Act's (CLCPA) economy-wide emission reduction mandates will require a rapid acceleration of ZEV deployment for light-duty vehicles and medium- and heavy-duty vehicles by 2030: from roughly 115,000 ZEVs today to around 3 million by the end of the decade.[3]

The Commission's July 2020 Make-Ready Order took an important step toward incentivizing build-out of L2 and DCFC to support light-duty vehicle (LDV) charging. However, it was only funded to support the explicit ZEV deployment goals in place at the time. In particular, important gaps remained to support charging for medium- and heavy-duty vehicles. Moreover, as utility progress to date demonstrates, deployment of stations to support LDVs has generally fallen short of the pace needed to reach the program's goals and refinements and additions are needed. As set forth in more detail below, we offer the following recommendations:

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[1] Case 18-E-0138, *Notice Of Meeting And Commencement of the Make-Ready Program Mid-Point Review,* August 30, 2022.

[2] September 20, 2022 Technical Conference Slides at Slide 7.

[3] Draft Scoping Plan, Integration Analysis Technical Supplement, Section 1, Annex 2, Key Drivers and Outputs (Sept. 21, 2022), available at https://climate.ny.gov/Climate-Resources.

- The Commission should use this Mid-Point Review to identify program enhancements necessary to support New York's growing medium- and heavy-duty charging needs;
- The Commission should host a technical conference on utility progress in achieving the Make-Ready Order's equity goals and evaluate potential program changes to better accomplish those goals;
- The Commission should use the Mid-Point Review to clarify how the Make-Ready Program synergizes with other EVSE support programs in New York and newly available federal funding streams including the National Electric Vehicle Infrastructure (NEVI) program.
- Given higher than anticipated make-ready infrastructure costs in many utility service territories, the Commission should explore stepping up certain of the Program's incentive caps in the near term; and
- The Commission should consider modifying performance incentive mechanisms to incentivize load-shifting to off-peak hours and deploying EVSE in Disadvantaged Communities.

I. The Commission Should Use This Mid-Point Review to Identify Program Enhancements Necessary to Support New York's Growing Medium- and Heavy-Duty Charging Needs

The Commission has already affirmed its position that "[t]he wide-scale adoption of EVs is critical to meeting CLCPA mandates" and has recognized in particular "the essential role" of public DCFC charging in facilitating "rapidly increasing EV adoption."[4] Since the inception of the Make-Ready Program, New York has greatly increased its commitments to electrifying medium- and heavy-duty vehicles (MHDV). In 2021, the Governor signed legislation committing the state to 100 percent new medium- and heavy-duty sales "everywhere feasible" by 2045.[5] Later that year New York finalized adoption of California's Advanced Clean Truck regulations,[6] which will require accelerated deployment of electric trucks and buses. Earlier this year through the State budget, New York State adopted a nation-leading mandate to fully electrify its fleet of school buses by 2035. On September 20, 2022, Governor Hochul signed an executive order requiring that 100 percent of State agency and department medium- and heavy-duty vehicle fleets will be zero emission vehicles by 2040.[7] And on September 29, 2022, Governor Hochul reaffirmed the state's light-duty vehicle commitments by announcing that the State will adopt California's Advanced Clean Cars II program requiring 100 percent zero emission vehicle sales by 2035.[8] In addition, the state's Scoping Plan, which is the roadmap for meeting the CLCPA's emission reduction mandates, will likely recommend adoption of the

[4] Order on Implementation of the Climate Leadership and Community Protection Act, Case No. 22-M-0149 (May 12, 2022) at 35-37.
[5] A.4302/S.2758, 2021-2022 Leg., Reg. Sess. (N.Y. 2021).
[6] Governor Hochul Announces Adoption of Regulation to Transition to Zero-Emission Trucks (Dec. 30, 2021), https://www.governor.ny.gov/news/governor-hochul-announces-adoption-regulation-transition-zero-emission-trucks.
[7] Executive Order No. 22 (Sept. 20, 2022), https://www.governor.ny.gov/sites/default/files/2022-09/EO_22.pdf.
[8] Press Release: Governor Hochul Drives Forward New York's Transition to Clean Transportation (Sept. 29, 2022), https://www.governor.ny.gov/news/governor-hochul-drives-forward-new-yorks-transition-clean-transportation.

Advanced Clean Fleets rule in California, which will extend the ZEV sales mandates in the ACT rule and require select fleets to procure an increasing share of MHDV ZEVs.

Earlier this year, several parties—including Sierra Club and NRDC—highlighted the importance of addressing the specific charging needs of MHDVs, and petitioned the Commission to review and modify the existing MHDV pilot programs and initiate a comprehensive process to address the full suite of MHDV charging issues not already covered in this docket.[9] Through this Mid-Point Review, the Commission has the opportunity to act on the recommendations in the petition and ensure the MHDV components of the Make-Ready Program are sufficiently robust to support New York's MHDV electrification goals.

The Commission's July 2020 Make-Ready Order included limited programs to support MHDV electrification. First, the Order authorized a Fleet Assessment Service program which, based on the urging of numerous commenters, was extended to medium-, and heavy-duty fleet operators as well as light-duty fleet operators.[10] The Fleet Assessment Service includes, initially, a site feasibility analysis based on the maximum power draw of the electrified fleet to determine whether the local distribution system can accommodate the increased load, and, if the site feasibility analysis is positive, a rate analysis to identify potential rate impacts and implement best practices and managed charging to mitigate these impacts.[11] To date, the State's six investor-owned utilities have completed 103 fleet assessments, of which approximately 80 percent were completed by ConEd and National Grid.[12] Indeed, two utilities have completed only two or fewer fleet assessments.[13]

In addition, the Make-Ready Order approved MHDV Pilots for the utilities, but imposed a number of requirements around the MHDV Pilots. In particular, the Commission ordered that the Pilots "must support a direct reduction of diesel emissions located in environmental justice communities through electrification of the [MHDVs]."[14] Further, the Commission mandated that participants must receive support through NYSERDA's New York Truck Voucher Incentive Program (NYTVIP) or New York City's Clean Trucks Program.[15] Eligible participants receive up to 90 percent of the utility-side make-ready infrastructure upgrade costs.[16] The Commission authorized a budget of $24 million for the Pilot across the six utilities.[17]

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[9] Petition of CALSTART, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, South Bronx Unite, and WE ACT for Environmental Justice for the Initiation of a Proceeding and Interim Measures Addressing Electric Vehicle Supply Equipment and Infrastructure for Medium- and Heavy-Duty Electric Vehicles, Case 18-E-0138 (May 11, 2022) (MHDV Petition).

[10] Make-Ready Order at 128.

[11] *Id.* at 128-29.

[12] Central Hudson (1 fleet assessment), ConEd (42 fleet assessments), Orange & Rockland (7 fleet assessments), National Grid (39 fleet assessments), NYSEG (12 fleet assessments), RG&E (2 fleet assessments), at Slides 11, 14, 17, 20, 23, 24.

[13] *See* slides 11, 24.

[14] Make-Ready Order at 131.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 130 ($9 million for ConEd and $15 million for the remaining utilities).

While the rationale for the parameters of the MHDV Pilot may have seemed prudent at the program's outset, experience to date shows that the current eligibility requirements are hampering the success of the Pilot. According to the Joint Utilities, 96 percent of fleets that have engaged with the utilities have been unable to participate in the MHDV pilot.[18] This was attributed to the lack of available incentives for customer-side make-ready work, ineligibility for the NYTVIP, the lack of a business case for fleets to electrify without these incentives, and a lack of vehicle availability.[19] We echo the Joint Utilities' recommendation that the Commission use this Mid-Point Review to expand the MHDV program's eligibility and incentives. In addition to making customer-side make-ready infrastructure eligible for incentives, the Commission should add incentives for technologies that minimize the need for grid upgrades, including on-site battery storage, networked chargers, and load management software.[20]

Moreover, the sizing of the MHDV Pilot is not calibrated with the State's growing MHDV charging needs. As noted above, to achieve the State's legislative MHDV deployment goals, comply with the Advanced Clean Trucks rule, and adhere to the Governor's Executive Order 22, rapid deployment of MHDVs will be necessary. According to Atlas Public Policy, New York will need 2,500 to 2,800 public and private chargers dedicated to MHDVs by 2024 and over 31,000 MHDV chargers in 2030.[21] The current scope of the MHDV Pilot will not enable New York to scale MHDV charging this rapidly. We urge the Commission to use the current program review to align the scope of the MHDV programs with New York's ZEV legislation and Advanced Clean Trucks commitments.

Within the MHDV sector, we urge the Commission to pay particular attention to the needs of the State's transit authorities as they take steps towards electrification of the full fleet of transit buses operating in the State. In the Make-Ready Order, the Commission noted the importance of transit bus electrification, especially with regards to fulfilling the equity provisions of the CLCPA.[22] But the Commission authorized a budget of less than $10 million to support just three transit authorities with make-ready work at transit bus depots, rejecting the New York Public Transit Authority's request for $50 million based on a finding that such an amount was "outsized to the initial need."[23] In the more than two years since the Make-Ready Order was adopted, it has become clear that more agencies across need access to the 100% make-ready support offered to economically initiate and scale-up electrification efforts. The Climate Action Council's modeling shows that, under any CLCPA-compliant scenario, the State will need to deploy 10,000 zero-emission buses by 2030.[24] Several transit agencies have already started taking steps towards full fleet electrification, including 8 that have received federal funds for zero-emission buses within the last 2 years. But, as the Commission heard in its kick-off

[18] Sept. 20, 2022 Technical Conference, Slide 31.

[19] *Id.*

[20] Setting charging infrastructure make-ready goals that match the sale and ambition of the electrification of vehicles in the state will help clarify grid needs and facilitate effective grid planning. It is important that the state's work to upgrade the grid in order to integrate the clean energy resources needed to meet CLCPA targets also takes into account how the grid will need to evolve for EV load.

[21] MHDV Petition, at Appendix A.

[22] Make-Ready Order at 132.

[23] *Id.* at 132-33.

[24] Integration Analysis, tab 3.

webinar, the current allocation is insufficient and "a lot more" support will be needed to meet the full extent of transit electrification goals and plans. Therefore we ask the Commission and Staff to work with utilities and transit authorities to right-size the Transit Authority program and ensure it is future proofed to support electrifying the State's entire fleet.

II. The PSC Should Host a Technical Conference on Utility Progress in Achieving Equity Goals in the Make-Ready Order and Evaluate Potential Program Changes to Better Accomplish Those Goals

For New York to successfully achieve its climate mandates and zero emission vehicle commitments, it is critical that EV ownership is attainable for all New Yorkers, regardless of income and housing type. To this end, commenters supported the efforts in the Make-Ready Order to increase the availability of publicly accessible charging infrastructure in proximity to Disadvantaged Communities (DACs). Based on the publicly reported data regarding station installation under the Make-Ready Program, it appears that utilities are not consistently achieving the DAC targets. Moreover, the utilities have not presented sufficient data to evaluate the Program's success in deploying L2 charging in multi-unit dwellings (MUDs). The Commission should host a technical conference to evaluate whether the program is meeting the needs of residents of DACs and, to the extent it is not, should make modifications to the Program, including evaluating the merits of utility ownership to support charger deployment in MUDs.

The Commission in its Make-Ready Order recognized the importance of making charging infrastructure available to residents of MUDs and DACs.[25] The Make-Ready Order earmarked 20 percent of utility budgets to support L2 plugs in multi-unit dwellings and DCFC plugs all within specified distances of environmental justice communities. It also encouraged utilities to exceed these investment levels, though stepped down the incentives beyond the earmarked 20 percent.[26] While the data presented by the utilities at the September 20, 2022 technical conference do not break out spending based on which stations meet the eligibility criteria for environmental justice, four of the six joint utilities reported plug share eligible for the disadvantaged community incentive below the targeted 20 percent.[27] Moreover, neither the utility annual reports nor the presentations during the September 20, 2022 technical conference, clearly breaks out the number of L2 chargers actually installed in MUDs under the Make-Ready Program to date. Consequently, it is difficult to evaluate the Program's success in deploying chargers in MUDs.

We therefore encourage the Commission to host a technical conference on ensuring that charging infrastructure supported by the Make-Ready Program is serving the needs of DACs, including residents of MUDs. For this technical conference, we urge the Commission to require more detailed reporting on charging station installations in MUDs, including identifying any barriers or obstacles utilities have faced in deploying charging infrastructure in this setting. We note that in our September 21, 2018 submission, we observed that "there is a particularly

[25] Make-Ready Order at 45.

[26] Make Ready Order at 46.

[27] *Cf.* Slides 11, 14, 17, 20, 23, 24.

compelling case to allow a utility ownership option for utility programs targeting MUDs."[28] To the extent that site host ownership has been a barrier to deployment of EV charging infrastructure in MUDs, we encourage the Commission to revisit the ownership issue during this technical conference.

III. The Commission Should Use the Mid-Point Review to Clarify How the Make-Ready Program Synergizes with Other EVSE Support Programs in New York and Newly Available Federal Funding

New York's utility Make-Ready programs are one of a number of programs and incentives designed to support the deployment of EV charging infrastructure in New York. Through its EVolve NY program, NYPA has committed to building out a backbone of fast charging stations along the State's major transit corridors.[29] In addition, NYSERDA has, until recently, maintained a Charge Ready NY program, which provides per-port incentives for L2 stations and a DCFC program. NYSERDA recently exhausted the available funding for this program.[30]

At the same time, sources of federal funding have become available to New York, including through the National Electric Vehicle Infrastructure (NEVI) formula program, through which New York will receive $175 million. The NEVI funding is intended, initially, to support fully building out DCFC along designated alternative fuel corridors, similar to the DCFC backbone NYPA committed to developing through EVolve NY. New York submitted its NEVI plan to the Federal Highway Administration on July 31, 2022.[31] In addition, the recently passed Inflation Reduction Act (IRA) has incentives for EV charging, including an extension and increase to the alternative fuel vehicle refueling property credit.[32]

Given the multiple programs and funding sources supporting similar charging infrastructure aims, on Sept. 20, 2022, Sierra Club, Earthjustice, and Environmental Advocates New York submitted a letter to the Governor urging her to "move forward with developing a comprehensive, coordinated, and inter-agency roadmap for how the State will implement its ambitious vehicle electrification and infrastructure deployment commitments." Until such a roadmap is developed, it will be critical to clarify goals for existing programs and pursue opportunities to use funding sources synergistically to build out the charging infrastructure that will be needed to support New York's climate and ZEV commitments. In the context of this proceeding, it may be appropriate to hold a technical conference to address the ways in which the next phases of the Make-Ready Program can be coordinated with the other state and federal funding sources to robustly support the development of EV charging infrastructure.

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[28] Joint Responses to Staff Post-Conference Questions, Case No. 18-E-0138 (Sept. 21, 2018), at 7.

[29] https://evolveny.nypa.gov/.

[30] *See* https://www.nyserda.ny.gov/charge-ready-ny.

[31] *See* https://www.nyserda.ny.gov/All-Programs/ChargeNY/Charge-Electric/Charging-Station-Programs/National-Electric-Vehicle-Infrastructure-Program.

[32] IRA Section 13404 (amending 26 U.S.C. § 30C).

IV. Given Higher than Anticipated Make-Ready Costs in Many Utility Service Territories, the Commission Should Explore Stepping Up Certain of the Program's Incentive Caps in the Near Term

The Midpoint Review Notice requests comments on program budgets and incentive levels, including whether support for make-ready costs should be stepped-down. As the Commission's Final Make-ready Order appropriately recognized, while incentive step downs may be warranted in the future as the market matures, it would be premature to reduce incentives while the market is nascent and still in need of support.[33] Given the finding from the Midpoint Presentation that statewide EVSE deployment is behind target, in part due to inadequate incentives for program participation, we recommend against any incentive reductions at this time.

Program data from the initial two years of program implementation strongly indicate that incentive level step-downs are not appropriate at this time, as existing levels are already inadequate to incentivize targeted levels of participation in many service territories. The data show that the market still relies heavily on incentives. For example, the Joint Utility Midpoint Presentation found that "existing incentives are not stimulating program participation at expected levels," and resulting in a slower than expected pace of deployment that could undermine state goals.[34] Likewise, National Grid's Make-Ready Program Evaluation Report found that "Level 2 station development is behind schedule and would benefit from increased incentives."[35] Overall, it was reported that applications for make-ready work dropped as NYSERDA's incentives were exhausted, signaling a continued need for stackable incentives and a whole-of-government approach to EVSE deployment. This data suggests that it would be inappropriate "to begin reducing the percentage of make-ready costs subsidized by the program" at this time, and that the Commission should instead consider increasing support to better promote program participation.

A significant limiting factor highlighted in the Midpoint Presentation is that utilities in many cases are unable to offer incentives at the full 50%, 90%, or 100% level envisioned by the Make-Ready Order.[36] Make-ready costs during program implementation have been higher than anticipated in the Make-Ready Order, particularly in many Downstate utility service territories, resulting in barriers to program implementation given budgets based on lower expected costs. Further, as several utilities highlighted during the September 20, 2022 technical conference, the costs of station installations are actually rising, consistent with broader national inflation trends and supply chain challenges.[37] Thus, even utilities' reported average installation costs may understate more recent costs. Given that program budgets are significantly underspent for all utilities, it would be appropriate to scale up eligible costs where actual average costs have

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[33] Order Establishing Electric Vehicle Infrastructure Make-Ready Program And Other Programs, at 66.

[34] EV Make Ready Program (MRP) Midpoint Review Kick Off Presentation, at page 30.

[35] National Grid Make-Ready Program Evaluation Report, at page 5, available at https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1E0AFF6C-9BFB-453A-A639-32CE99BF780D}.

[36] EV Make Ready Program (MRP) Midpoint Review Kick Off Presentation, at page 30.

[37] While some utilities' actual average costs for were somewhat below the baseline for DCFC installations to date, the number of DCFC that these averages are based on represent too small a sample size to support any reduction in incentives at this time.

exceeded the program baseline. This would help address an important barrier inhibiting greater program participation, helping re-align deployment with state goals.

V. The Commission Should Consider Modifying Performance Incentive Mechanisms to Incentivize Load-Shifting to Off-Peak Hours and Deploying Infrastructure in Disadvantaged Communities

The Midpoint Review Notice requests comments on potential modifications to performance incentive mechanisms, including any changes that should be made to the EAM framework. As we previously recommended in comments on the Staff Whitepaper, the Commission should consider performance incentive mechanisms tied to utilities' success in pushing load to off-peak hours, providing fuel cost savings, and exceeding minimum requirements for deployments in disadvantaged communities. This approach would mirror performance-based incentive mechanism developed by San Diego Gas & Electric which received broad support from supported by the Coalition of California Utility Employees (IBEW), the Greenlining Institute, Plug In America, Sierra Club, EDF, UCS, Siemens, Greenlots, eMotorWerks, Honda Motor Co., General Motors, and the Alliance of Automobile Manufacturers.

As part of its proposed residential charging program, SDG&E designed a novel "Companion Incentive Mechanism" that consisted of a "Flat Dollar Incentive Component" and a "Performance-Based Incentive Component," both of which incentivized greater investment in disadvantaged and low-income communities. The Flat Dollar Incentive would have provided SDG&E with a fixed award per charging station installation, with a larger dollar award for installations in Disadvantaged Communities. The Performance-Based Incentive would have tied all further utility earnings to: 1) the percentage of charging station installations in disadvantaged communities; and 2) the percentage of charging during off-peak and super off-peak periods—aligning shareholder incentives with successful program implementation, more equitable access to charging infrastructure, and improved grid utilization.

SDG&E Performance Incentive Mechanism[38]

1. **Flat Dollar Incentive Component** – After SDG&E provides proof of 10,000 EVSE installations, SDG&E will be awarded a Flat-Dollar incentive award of $84.00 per installation for DAC/CARE/FERA customers and $77.00 per installation for all other customers. The incentive level is equivalent to 4% of the RCP's maximum total allowance per EVSE for DAC/CARE/FERA customers ($2,100.00) and for all other customers ($1,925.00). The incentive applies to all EVSEs installed under the RCP, and not just for EVSEs installed after the 10,000-qualification minimum. This portion of the incentive will be collected annually.

EVSE Deployed (a)	PBI Bonus Weighted % (d)	Flat Dollar Incentive Per DAC/CARE/FERA (e) (d) X $2,100	Flat Dollar Incentive Per Non DAC/CARE/FERA (f) (d) x $1,925
60,000	4.00%	$84.00	$77.00
50,000	4.00%	$84.00	$77.00
40,000	4.00%	$84.00	$77.00
30,000	4.00%	$84.00	$77.00
20,000	4.00%	$84.00	$77.00
10,000	4.00%	$84.00	$77.00

2. **Performance-Based Incentive Component** – The incentive level for the PBI is equivalent to 4.5% of the RCP's maximum total allowance per EVSE for DAC/CARE/FERA customers ($2,100.00) and for all other customers ($1,925). However, the 4.5% is adjusted by a credit multiplier percentage that ranges from a 40% minimum to a maximum of 162.00% depending on how well SDG&E performs as to the (1) percentage of EVSE installations for DAC/CARE/FERA customers; and (2) percentage of EV charging (MWh) during off peak and super off-peak periods. The PBI portions of the incentive will be collected annually.

EVSE Deployed (a)	% DAC/CARE/ FERA (b)	% Off Peak Charging (c)	Credit Multiplier (d)	PBI Bonus Weighted % (e)	Qualifying Incentive % (d)x(e) (f)	PBI Incentive Per DAC/CARE/FERA (f) X $2,100 (g)	PBI Incentive Per Non DAC/CARE/FERA (f) x $1,925 (h)
60,000	40%	97%	162.00%	4.50%	7.29%	$153.09	$140.33
50,000	35%	95%	146.67%	4.50%	6.60%	$138.60	$127.05
40,000	30%	90%	123.33%	4.50%	5.55%	$116.55	$106.84
30,000	25%	85%	100.00%	4.50%	4.50%	$94.50	$86.63
20,000	20%	75%	63.33%	4.50%	2.85%	$59.85	$54.86
10,000	15%	70%	40.00%	4.50%	1.80%	$37.80	$34.65

[38] Advice Letter 3287-E, *Implementation of SDG&E's Residential Charging Program in Compliance with Decision 18-05-040*.

The Commission should look beyond only performance incentive mechanisms tied to minimizing program costs, and should examine additional incentive mechanism which would promote the achievement of state policy goals. Beyond just lowering installation costs, utilities should be adequately incented to lower customer fueling costs by encouraging greater off-peak charging, as well as providing equitable access to clean transportation for LMI and EJ communities. Accordingly, the Commission should consider modifying the existing performance incentive mechanism to include incentives for encouraging load shifting to off peak hours and deploying infrastructure in low-income communities.

VI. Conclusion

With the modifications recommended above, the Make-Ready Program would better support the growing electric vehicle market in New York and help the state move towards achieving the goals of the CLCPA and ZEV program. We appreciate the opportunity to comment on the Staff Whitepaper and look forward to continued work with the Commission, Staff, and other stakeholders on the implementation of this important program.

/s/ Miles Muller
Miles Muller
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, California 94104
mmuller@nrdc.org

/s/ Josh Berman
Josh Berman
Sierra Club
50 F St. NW, 8th Floor
Washington, DC 20001
Josh.berman@sierraclub.org

/s/ Alok Disa
Alok Disa
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
adisa@earthjustice.org